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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 313

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

INTERNATIONAL RICE MILLING COMPANY, INC.,
ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 18, 1950.
CERTIORARI GRANTED DECEMBER 11, 1950.

SUPREME COURT OF THE UNITED STATES

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1 In the United States Circuit Court of Appeals for the Fifth Circuit

No. 12909

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL., PETITIONER

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

PETITION FOR REVIEW AND TO SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD AND TO MAKE AND ENTER A DECREE

Filed August 1, 1949

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The following named corporations and individuals, hereinafter referred to as "Petitioners:"

1. International Rice Milling Company, Inc., a Louisiana corporation with its principal office and plant at Crowley, Louisiana, and engaged in operating a rice mill;

2. American Rice Milling Company, Inc., a Louisiana corporation with its principal office and plant at Crowley, Louisiana, and engaged in operating a rice mill;

3. Louisiana State Rice Milling Company, Inc., a Louisiana corporation with its principal office at Abbeville, Louisiana, and engaged in operating rice mills at Abbeville, Crowley, and Rayne, Louisiana;

2 4. Kaplan Rice Mills, Inc., a Louisiana corporation with its principal office and plant at Kaplan, Louisiana and engaged in operating a rice mill;

5. Joseph Dore, Sr., an individual doing business as Supreme Rice Mill, having his principal office and plant at Crowley, Louisiana, and engaged in operating a rice mill; and

6. Monte Loving, an individual doing business as Loving Rice Mills, having his principal office and plant at Crowley, Louisiana, and engaged in operating a rice mill;

respectfully petition this Honorable Court for a review of a final order of the National Labor Relations Board, hereinafter referred to as the "Board", in four certain proceedings, instituted upon the complaints of your petitioners, entitled on the records of the Board,

"In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and The International Rice Milling Co., Inc., American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; and Joseph Dore, Sr., doing business as Supreme Rice Mill"

"In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and Loving Rice Mills"

"In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and Louisiana State Rice Milling Co., Inc."

3 "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and Kaplan Rice Mills, Inc."

being cases numbered 15-CC-1, 2, 3, and 4, which cases have heretofore been consolidated in the proceedings before the Board.

In support of this petition, your petitioners respectfully show:

I

That each of your petitioners is domiciled in the State of Louisiana, and doing business as described above in Crowley, Rayne, Abbeville, and Kaplan, Louisiana.

II

That during the month of October, 1947, your petitioners filed with the Board several charges, and amended charges, alleging that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 201, AFL, hereinafter referred to as the "Union", had engaged in and was engaging in unfair labor practices within the meaning of Section 8(b)(4)(A) and (B) of the National Labor Relations Act, as amended, hereinafter referred to as the "Act".

III

That following an investigation by the said Board, the General Counsel of the Board issued a complaint on January 27, 1948, against the aforesaid Union, charging said Union with viola-

4 tions of Section 8(b)(4)(A) and (B), and Section 2(6) and (7) of the Act.

IV

That on March 25, 26, and 27, 1948, a hearing upon the aforesaid complaint was held in Crowley, Louisiana, before Frederic B. Parkes, II, the duly designated Trial Examiner, appearing on behalf of the Board; that on or about June 25, 1948, the aforesaid Trial Examiner issued his Intermediate Report in this matter, said Report being numbered IR-1666. C. M. III.

V

That subsequent to the issuance of the aforesaid Intermediate Report, your petitioners timely filed Exceptions to said Intermediate Report, and a brief in support of said Exceptions. C. M. III.

VI

That on or about June 20, 1949, the Board rendered its Decision and Order in this matter, dismissing the complaint theretofore filed against the aforesaid Union. C. M. III.

VII

That the Board erred in entering its said Decision and Order of June 20, 1949, in that:

(a) The Board determined as a matter of law that the employees of the Texas and New Orleans Railroad and the New Orleans, Texas and Mexico Railroad Company, Guy A. Thompson, trustee,
5 were not "employees" of any "employer", as those terms are found in Section 8(b)(4)(A) and (B) of the Act, and that, accordingly, the acts of the aforesaid Union with respect to the employees of these railroad companies did not constitute an unfair labor practice under the act.

(b) The Board found and determined that the activities of the aforesaid Union in picketing and engaging in violence, directed against the employees of the Sales and Service House of New Iberia, Louisiana, was "primary" picketing of the plant of the Kaplan Rice Mills, Inc., at Kaplan, Louisiana, and did not constitute a violation of Section 8(b)(4)(A) and (B) of the Act.

(c) The Board failed to adopt the findings, conclusions and recommendations of the aforesaid Trial Examiner, except that petitioners submit that said findings, conclusions and recommendations of the Trial Examiner should have been amended and enlarged as indicated by the Exceptions filed to the aforementioned Intermediate Report of the Trial Examiner, a copy of which Exceptions is annexed hereto and made part hereof.

(d) The Board failed to enter an order in the following language:

"The respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, its officers and agents shall:

"1. Cease and desist from:

"(A) Inducing or encouraging by any means whatsoever, including picketing on or across railroad rights of way, wherever
6 said rights of way are located, the employees of the Texas and New Orleans Railroad, of the New Orleans, Texas and

Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object of forcing or requiring the Texas and New Orleans Railroad; the New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; The Sales and Service House; or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc.;

"(b) Inducing or encouraging by any means whatsoever, including picketing on or across railroad rights of way, wherever said rights of way are located, the employees of the Texas and New Orleans Railroad, of the New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object of forcing or requiring International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill;
7 Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees of such companies unless such labor organization has been certified by the Board as the representative of such employees.

"2. Take the following affirmative action, which the Board find will effectuate the policies of the Act:

"Post in conspicuous places at the business office of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, at Crowley, Louisiana, where notices or communications to members are customarily posted, copies of the notice attached hereto. Copies of the notice to be furnished by the Regional Director for the Fifteenth Region, shall after being signed by an official representative of Local No. 201, be posted by the respondent immediately upon receipt thereof and

maintained by it for a period of sixty (60) consecutive dates thereafter. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material."

VIII

That under the provisions of Section 10(f) of the Act, 29 U. S. C. A., Sec. 160(f), this Honorable Court has jurisdiction in the premises.

Wherefore, petitioners pray that this Honorable Court review the aforementioned Decision and Order of the Board of June 20, 1949, in the aforementioned proceedings of the National Labor Relations Board, Cases No. 15-CC-1, 2, 3, and 4, which Decision and
8 Order are erroneous, as above set forth, and

Petitioners further pray that:

(a) The Board be directed to certify and to deliver to this Honorable Court a transcript of the entire record of the said proceedings before the Board; and

(b) Upon the filing of the said transcript, this Honorable Court review the said Decision and Order of the Board; and

(c) The said Decision and Order of the Board be set aside, and that this Honorable Court make and enter a decree in the following terms and words, to-wit:

"The respondent, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, its officers and agents shall:

"1. Cease and desist from:

"(a) Inducing or encouraging by any means whatsoever, including picketing on or across railroad rights of way, wherever said rights of way are located, the employees of the Texas and New Orleans Railroad, of the New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, with the object of forcing or requiring the Texas and New Orleans
9 Railroad; the New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; The Sales and Service House; or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte

Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc.;

"(b) Inducing or encouraging by any means whatsoever, including picketing on or across railroad rights of way, wherever said rights of way are located, the employees of the Texas and New Orleans Railroad, of the New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object of forcing or requiring International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees of such companies unless such labor organization has been certified by the Board as the representative of such employees.

10 "2. Take the following affirmative action, which the Court finds will effectuate the policies of the Act:

"Post in conspicuous places at the business office of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, at Crowley, Louisiana, where notices or communications to members are customarily posted, copies of the notice attached hereto. Copies of the notice to be furnished by the Regional Director for the Fifteenth Region, shall after being signed by an official representative of Local No. 201, be posted by the respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive dates thereafter. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material."

(d) Petitioners be granted such additional relief as the law, equity, and the nature of their case may require.

BALDWIN, HASPEL & MOLONY,
(Signed) By L. A. MOLONY,
(Signed) CONRAD MEYER, III,
KAUFMAN, ANDERSON & LEITHEAD,
(Signed) By E. R. KAUFMAN,
MONROE & LEMANN,
(Signed) By NICHOLAS G. CALLAN,
Attorneys for Petitioners.

11 STATE OF LOUISIANA,
Parish of Orleans,

Before me, the undersigned authority, a Notary Public, duly commissioned and qualified within and for the Parish and State aforesaid, personally came and appeared:

Lawrence A. Molony, who, after being duly sworn, did depose and say:

That he is of Counsel for petitioners in the above and foregoing petition; that he has prepared same; and that all the allegations contained therein are true and correct to the best of his knowledge, information and belief.

That he has served a copy of this petition on the following named persons by depositing a copy of this petition in the United States mail on this date, addressed to each of them: Mr. Chris Dixie, Combs & Dixie, State National Building, Houston, Texas; Mr. Aubrey Hirsch, Triad Building, Baton Rouge, Louisiana; Mr. J. J. Davidson, Davidson & Davidson, Lafayette, Louisiana; Milling, Godchaux, Saal & Saunders, Atten: Mr. J. B. Miller, Whitney Building, New Orleans, Louisiana; Mr. C. Paul Barker, At-
12 torney, Fifteenth Region, N. L. R. B., 1539 Jackson Avenue, New Orleans, Louisiana; National Labor Relations Board, Washington 25, D. C.

(Signed) L. A. MOLONY.

Sworn to and subscribed before me on this 28th day of the month of July, 1949.

(Signed) CONRAD MEYER, III,
Notary Public.

NOTICE

To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL:

Pursuant to an Order of the United States Circuit Court of Appeals for the Fifth Circuit, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

We Will Not induce or encourage the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods,

articles, materials, or commodities, or to perform any services with the object

13 1. Of forcing or requiring Texas and New Orleans Railroad; New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; The Sales and Service House; or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., or

2. Of forcing or requiring International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees of such companies unless Local No. 201, has been certified by the National Labor Relations Board as the representative of such employees.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 201, AFL, (Labor Organization),

By .....,
Title of Officer.

Dated: .....

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

14 In the United States Court of Appeals for the Fifth Circuit

[Title omitted]

ORDER TO FILE PETITION—Filed August 1, 1949

A petition for review of the Order of the National Labor Relations Board entered on June 20, 1949, in the proceedings entitled "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and The International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; and

Joseph Dore, Sr., doing business as Supreme Rice Mill," "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and Loving Rice Mills," "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and Louisiana State Rice Milling Co., Inc.", and "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and Kaplan Rice Mills, Inc.", Cases Nos. 15-CC-1, 2, 3, and 4, having been presented to this Court;

It Is Ordered that said petition be filed and docketed as of August 1st, 1949; and

15 It Is Further Ordered that a copy of this Order and the said petition be forthwith served on the National Labor Relations Board, and that said Board, upon service of such copy, forthwith certify and file in this Court a transcript of the entire record of the aforesaid proceeding in conformity with Rule 38 of this Court.

New Orleans, Louisiana, this 1st day of August, A. D. 1949.

(Signed) CURTIS L. WALLER,
United States Circuit Judge.

In the United States Court of Appeals for the Fifth Circuit

[Title omitted]

ANSWER OF NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF AND TO SET ASIDE ITS ORDER—Filed September 26, 1949

To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. I, Secs. 141, et seq.), herein called the Act, files this answer to the petition for review of and to set aside an order issued by the Board in the proceedings designated on the records of the Board as Cases Nos. 15-CC-1,

16 15-CC-2, 15-CC-3, and 15-CC-4, entitled respectively: In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and The International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; and Joseph Dore, Sr., doing business as Supreme Rice Mill; In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL and

Loving Rice Mills; In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL and Louisiana State Rice Milling Co., Inc.; In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL and Kaplan Rice Mills, Inc.

1. The Board admits the allegation contained in Part VIII of the Petition for Review.

2. Answering the allegations contained in Parts I, II, III, IV, V, and VI of the Petition for Review, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in the matter.

3. The Board denies each and every allegation of error contained in Part VII of the Petition for Review.

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

17 Wherefore, the Board respectfully requests this Court to deny the Petitioner's prayer for relief.

NATIONAL LABOR RELATIONS BOARD,
(S.) By A. NORMAN SOMERS,
(A. Norman Somers),
Assistant General Counsel.

Dated at Washington, D. C., this 23rd day of September, 1949.

Duly sworn to by A. Norman Somers. Jurat omitted in printing.

18 United States of America

National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, and Messrs. Leo B. Carter, Milton G. J. Broussard and Paul Kuhns, at Crowley and Abberville, Louisiana has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8 (b) subsections 4, 4(a), 4(b) of said Act, in that. (Recite in detail the basis of the charge. Be specific

as to names, addresses, plants, dates, places and other relevant facts).

EXHIBIT A

The International Rice Milling Co., Inc. of Crowley, Louisiana, the Supreme Rice Mill of Crowley, La. the American Rice Milling Co., Inc. of Crowley, and the Louisiana State Rice Milling Co., Inc., with rice mills at Crowley and Abbeville, are engaged in the milling of rice and the purchase and sale thereof in Interstate Commerce. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, during the early part of 1947, filed a petition before this Board claiming to represent a majority of the employees of said companies. The said petitions were withdrawn by this union before elections were held on said petitions and the said union was never certified as the
19 bargaining representatives of the employees of said companies. On September 3, 1947, the said companies received a telegram from Leo B. Carter, Milton G. J. Broussard and Paul Kuhns, stating that they had been selected as a committee by a majority of the employees to represent them in all matters pertaining to collective bargaining and in connection with a work stoppage which they alleged existed at the said plants. All three parties who signed the said telegram are officers of the said International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or one of the Locals thereof; and neither the said union or any of the said committee have ever been recognized by the companies as representing a majority of the employees and the said companies have continued to operate their mills up to the present time. During the evening of October 13, 1947, Mr. Milton G. J. Broussard advised Mr. Andrew Lacour, Local Chairman of the Brotherhood of Railroad Trainmen, representing the employees of the Missouri-Pacific Railroad Co., the Southern Pacific Railroad Co., the T & NO Railroad Co. and the Texas and Pacific Railroad Co. that he had heard rumors that if the railroad employees did not respect the picket lines of the Interna—l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, or of the said committee, there might be trouble and that the trainmen would get hurt if they crossed the picket lines to switch cars.

On the morning of October 14th, 1947 the said union and/or committee established picket lines across the railroad tracks outside of and leading into the mills of the said companies; that, specifically, a picket line was established on the sidewalk parallel to Avenue F in Crowley, which crosses the railroad track which leads into the International Rice Mill, the sidewalk being
20 immediately adjacent to the International Rice Mill, the Right of Way and railroad track, however, being owned by

the railroad company. Another picket line was established on the railroad track paralleling Parkerson Avenue, in Crowley, immediately adjacent to the mill of the Louisiana State Rice Milling Co., said picket line crossing the railroad tracks belonging to the railroad companies. Another picket line was established across the railroad track leading into the rice mill of the Louisiana State Rice Milling Co., at Abbeville, Louisiana, on Railroad Avenue and Jefferson Street.

On the morning of October 15th, 1947 another picket line was established by this said union, or committee, on an unnamed street and across the right-of-way and tracks of the Missouri-Pacific Railroad Co. at a point 200 yards west of the Supreme Rice Mill, in Crowley; that this track is used to serve numerous rice mills in Crowley and the point of the said picket line was west of the town so that a refusal to cross the said picket line would make it impossible for the said railroad to haul freight to and from any of the said rice mills on the said line, including the American Rice Milling Co., the Louisiana State Rice Mill, the Supreme Rice Mill and the Imperial Rice Mill. As a result of the statements made by Mr. Broussard to Andrew Lacour, above mentioned, as a representative of the employees of the said railroads, and of the said picket lines, the employees of the said railroad companies on the morning of October 15th, 1947 refused to cross the said picket lines and to haul freight into or out of the said mills. The Louisiana State Rice Milling Co. and the American Rice Milling Company both had freight consigned to them on the Missouri-Pacific Railroad Company track which was en route to be moved into the plants over that track on the morning of the 15th and which was stopped at the picket line 200 yards west of the Supreme Rice Mill
21 where the employees of the said Missouri-Pacific Railroad, because of the said picket line and the statements made above, refused to cross that picket line; that the said picket line is at a point at least 600 yards west of the American Rice Milling Co.; that the Supreme Rice Milling Co. also had freight consigned to it on the said Missouri-Pacific Railroad track on the morning of October 15th, 1947 which was stopped at the picket line 200 yards west of its said mill, and because of the said picket line and the statements made above, the employees of the railroad refused to cross the said picket line and deliver the said freight; that said union and/or committee also established a picket line on the east side of the Supreme Rice Mill and across the railroad track at that point; that on the morning of October 16th, 1947, the said union and/or committee established a picket line at a point approximately 200 feet west of the plant of the American Rice Milling Co. and across the railroad right-of-way at that point. Because of all of the said picket lines and the statements

above referred to, the employees of the said railroad companies have refused and continue to refuse to cross any of the said picket lines or to haul freight into or out of any of the said mills; that said actions, above described, constitute an unfair labor practice within the meaning of Section 8(b), Subsections 4, 4(a), 4(b) of the National Labor Relations Act.

The rice being received and shipped by the said mills is a perishable commodity; that a large part of its is being received from dryers which have no facilities for storage; that if they are unable to have the said rice transported to these mills, it would not be possible for them to accept it from the farmers and a serious irreparable loss and injury would be suffered by the rice farmers of Louisiana and by the said mills; that the said rice is an
22 essential substitute for wheat in the present National Campaign to conserve wheat for the feeding of Europe and serious injury will be suffered by the people of the community and the Nation if the said union and the committee are not immediately restrained and enjoined by the District Court of the United States on Petition of the Board or its regional attorney under Section 10, Subsections (j) and (l) of the Act, pending a hearing by this Board, from continuing the said unfair labor practices.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name of Employer The International Rice Milling Co., Inc., American Rice Milling Co., Inc. and the Louisiana State Rice Milling Co., Inc. and the Supreme Rice Mill,

Location of plants involved Crowley, Louisiana and Abbeville, La.

Nature of Business Rice milling.

The labor organization filing the charge herein has complied with Section 9(f) and (g) of said Act. Certificate of Compliance was issued by the Department of Labor on .....
bearing Certificate No. ..... and the expiration date ..... The officers of this labor organization has also filed affidavits with the National Labor Relations Board under date of ..... as required by Section 9(h) of said Act.

Upon information and belief, the national or international labor organization of which this organization is an affiliate or
23 constituent unit has also complied with Section 9(f), (g) and (h) of the Act.

The International Rice Milling Co., Inc., American Rice Milling Co., Inc. and the Louisiana State Rice Milling Co., Inc. and the Supreme Rice Mill (Full name of party filing charge).

All at Crowley, Louisiana (Address) ..... (Telephone number)

BALDWIN, HASPEL & MOLONY,
By L. A. MOLONY,
MONROE & LEMANN,
By NICHOLAS CALLAN,
ANDERSON & KAUFMAN,
By NICHOLAS CALLAN,
(Signature of parties filing charge.)
Attorneys.

Do not write in this space
Case No. 15-CC-1
Date filed October 16, 1947
9 (f), (g), (h) cleared .....

Subscribed and sworn to before me this 16th day of October, 1947, at New Orleans, Louisiana, as true to the best of deponent's knowledge, information, and belief.

CONRAD MEYER, III,
[SEAL.] *(Notary Public.)*

(Submit Original and Four Copies of this Charge.)

24 United States of America

National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, and Messrs. Leo B. Carter, Milton G. J. Broussard and Paul Kuhns, (Name of Labor organization or its agents) at Crowley, Louisiana, has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8 (b) subsections 1, 4, 4a, 4b of said Act, in that (Recite in detail the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts).

EXHIBIT A.

The Loving Rice Mills, of Crowley, Louisiana, owned and operated by Mr. Monte Loving, are engaged in the milling of rice and the purchase and sale thereof in Interstate Commerce. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen

and Helpers of America, Local No. 201, has never communicated to the proprietors of said mill any claim to represent the employees of that mill, but has endeavored to force its employees to engage in a strike. On October 4, 1947, nine representatives of the said union attacked and assaulted three employees of the said mill, beating one of them with a club in an effort to force them to join the said union and engage in the said strike. As a result of this violence, one Leonard Maynard, connected with the union, pleaded guilty in the City Court of Crowley to striking
25 Thomas Stafford with a club and was fined $15.00. On the evening of October 13th, 1947, Mr. Milton G. J. Broussard, business agent of the said union, advised Mr. Andrew Lacour, Local Chairman of the Brotherhood of Railroad Trainmen, representing the employees of the Missouri-Pacific Railroad Company, the Southern Pacific Railroad Company, the T. & NO Railroad Company and the Texas & Pacific Railroad Company that he had heard rumors that if the railroad employees did not respect the picket lines of the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, Local No. 201, or of the union committee, there might be trouble and that the trainmen would get hurt if they crossed the picket lines to switch cars. On the morning of October 17th, 1947, the said union and/or committee representing the union established picket lines across the railroad tracks outside of and leading into the mill of the Loving Rice Mills, in Crowley, the picket line traversing the railroad track and the right-of-way of the railroad which is owned by the railroad company. Because of the statements, above referred to, made by Broussard to Lacour, and of the said picket line, the employees of the said railroad companies have refused and continue to refuse to cross the said picket line or to haul freight into or out of the said mill; that said actions, above described, constitute unfair labor practices within the meaning of Section 8(b), Subsections 1, 4, 4(a) and 4(b) of the National Labor Relations Act.

The rice being received and shipped by the said mills is a perishable commodity; that a large part of it is being received from dryers which have no facilities for storage; that if they are unable to have the said rice transported to these mills, it would not be possible for them to accept it from the farmers and a serious irreparable loss and injury would be suffered by the rice
26 farmers of Louisiana and by the said mills; that the said rice is an essential substitute for wheat in the present National Campaign to conserve wheat for the feeding of Europe and serious injury will be suffered by the people of the community and the Nation if the said union and the committee are not immediately restrained and enjoined by the District Court of the United States on petition of the Board or its regional attorney under Section 10,

Subsections (j) and (l) of the Act, pending a hearing by this Board, from continuing the said unfair labor practices.

Only one employee of the said mill has left his employment as a result of the said actions.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name of Employer: Loving Rice Mills, owned and operated by Monte Loving.

Location of plant involved: Crowley, Louisiana.

Nature of Business: Rice milling.

The labor organization filing the charge herein has complied with Section 9(f) and (g) of said Act. Certificate of Compliance was issued by the Department of labor on ..... bearing Certificate No. ..... and expiration date ..... The officers of this labor organization have also filed affidavits with the National Labor Relations Board under date of ..... as required by Section 9(h) of said Act.

27 Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g) and (h) of the Act.

Loving Rice Mills, owned and operated by Monte Loving (Full name of party filing charge).

Crowley, Louisiana (Address) ..... (Telephone number).

BALDWIN, HASPEL & MOLONY,
By L. A. MOLONY,
(Signature of party filing charge)
Attorneys (Title, or office, if any).

Do not write in this space
Case No. 15-CC-2
Date filed October 17, 1947
9 (f), (g), (h) cleared .....

Subscribed and sworn to before me this 17th day of October, 1947 at New Orleans, Louisiana, as true to the best of deponent's knowledge, information, and belief.

CONRAD MEYER, III,
(Notary Public).

[SEAL.]

(Submit Original and Four Copies of this Charge).

28 United States of America

National Labor Relations Board

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Interna—l Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America Local No. 201 and Messrs. Leo B. Carter, Milton C. J. Broussard and Paul Kuhns (Name of Labor organization or its agents) at Rayne, La., has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8 (b) subsections 4, 4(a), 4(b) of said Act, in that (Recite in detail the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts). The facts in this matter are similar to those incorporated in charges heretofore filed against the above named parties by various rice mills, and are incorporated herein by reference. The charge here is made by Louisiana State Rice Milling Co., Inc. In this particular matter the above named parties on or about Friday, October 17, and since have maintained picket line railroad tracks in Arenas Street, Rayne, La., leading to the mill of Louisiana State Rice Milling Co., Inc., and have by means of threats, the nature of which are set out in the previous charges above referred to, prevented Louisiana State Rice Milling Co., Inc. from receiving rail service.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

29 Name of Employer: Louisiana State Rice Milling Co., Inc.
Location of plant involved: Rayne, La.

Nature of Business: Rice Milling.

The labor organization filing the charge herein has complied with Section 9(f) and (g) of said Act. Certificate of Compliance was issued by the Department of Labor on ..... bearing Certificate No. ..... and expiration date .....
The officers of this labor organization has also filed affidavits with the National Labor Relations Board under date of .....
as required by Section 9(h) of said Act.

Upon information and belief, the national or international labor organization of which this organization is an affiliate or constitutent unit has also complied with Section 9(f), (g) and (h) of the Act.

Louisiana State Rice Milling Co., Inc. (Full name of party filing charge).

Abbeville, La. (Address) ..... (Telephone number).

LOUISIANA STATE RICE
MILLING CO., INC.,
KAUFMAN & ANDERSON,
By MONROE & LEMANN,
NICHOLAS CALLAN,
(Signature of party filing charge).
Attorneys (Title, or office, if any).

Do not write in this space
Case No. 15-CC-3
Date filed October 20, 1947
9 (f), (g), (h) cleared .....

30 Subscribed and sworn to before me this 20th day of October, 1947, at New Orleans, Louisiana, as true to the best of deponent's knowledge, information, and belief.

WATTS K. LEVERRET,
[SEAL.] *(Board Agent or Notary Public.)*

(Submit Original and Four Copies of this Charge).

United States of America

National Labor Relations Board

No. 15CC4

AMENDMENT TO CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 201, and Messrs. Leo B. Carter, Milton G. J. Broussard & Paul Kuhns (Name of labor organization or its agents) at Kaplan, Louisiana, has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section 8(b) subsections 4, 4(a), 4(b), of said Act, in that: (Recite in detail in paragraph 2 the basis of the charge. Be specific as to names, addresses, plants, dates, places, and other relevant facts).

31 EXHIBIT "A"

2. On the 21st day of October, 1947, a wholesale van truck, driven by Clarence Boutte, a white man, with a negro helper, at-

tempted to enter the Kaplan Rice Mills, Inc., at Kaplan, to get a load of rice bran which they had been ordered to pick up. The International Brotherhood of Teamsters Union and the members of its picket line stopped the truck on the road into the said mill and advised them that they could not go to the Kaplan Rice Mill. Mr. C. J. Montgomery, Jr., Manager of the said mill, thereupon drove to meet the said truck and advised the driver that he should return to the mill and that he, Montgomery, would ride with him to be certain that no interference took place. The truck then proceeded in the direction of the Kaplan Rice Mill, taking a route that would lead it around the pickets so that it would not come into contact with the pickets. The pickets, seeing the truck, however, ran across to the street on which the truck was approaching and endeavored to stop the truck. Montgomery, seeing the strikers coming in the direction of the truck, walked along by the side of the truck in order that they might see that he was present. The strikers called to the truck to stop. Montgomery ordered him to go on. Thereupon, the strikers who were members and employees of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 201, picked up rocks and began throwing them at the driver of the truck and Montgomery. Montgomery jumped on the running board of the truck so that he might put his head in the cab to keep from getting struck by the rocks. He was struck on the shoulder but the truck ran the barrage of rocks from the strikers and went on through to the mill. Max C. Broussard, Minous, and Langlinais were thereafter convicted in the City Court in Kaplan for this violence, having been charged with assault and battery.

32 The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. Name of Employer: Kaplan Rice Mills, Inc.

4. Location of plant involved Kaplan, Louisiana (Street) (City) (State) Employing 75 (Number of workers)

5. Nature of business: Rice Milling.

6. (Paragraphs 6, 7, and 8 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number ..... The financial data filed with the Secretary of Labor is for the fiscal year ending ..... A Certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method

employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

7. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

8. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

33 Kaplan Rice Mills, Inc. (Full name of party filing charge) Kaplan, Louisiana (Address) (Street) (City) (State) ..... (Telephone number)

By LAWRENCE A. MOLONY,
(Signature of representative or person filing charge).
Attorney (Title or office, if any).

Do not write in this space
Case No. 15-CC-4
Date filed January 5, 1948
9(f), (g), (h) cleared .....

Subscribed and sworn to before me this 2nd day of January, 1948, at New Orleans, La., as true to the best of deponent's knowledge, information and belief.

CONRAD MEYER III,
[SEAL.] *(Notary Public).*

(Submit Original and Four Copies of this Charge.)

34 Before the National Labor Relations Board

In the Matter of:

Case No. 15-CC-1

The International Rice Milling Co., Inc., American Rice Milling Co., Inc. and the Louisiana State Rice Milling Co., Inc. and the Supreme Rice Mill

and

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, and Messrs. Leo B. Carter, Milton G. J. Broussard and Paul Kuhns.

Case No. 15-CC-2

Loving Rice Mills, Owned and Operated by Monte Loving

and

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of Ameriea, Local No. 201, and Messrs. Leo B. Carter, Milton G. J. Broussard and Paul Kuhns.

Case No. 15-CC-3

Louisiana State Rice Milling Co., Inc.,

and

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201; and Messrs. Leo B. Carter, Milton G. J. Broussard and Paul Kuhns.

Case No. 15-CC-4

Kaplan Rice Mills, Inc.

and

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, and Messrs. Leo B. Carter, Milton G. J. Broussard and Paul Kuhns.

ORDER CONSOLIDATING CASES

35 A charge, pursuant to Section 10 (b) of the Act, having been filed by The International Rice Milling Co., Inc., American Rice Milling Co., Inc. and the Louisiana State Rice Milling Co., Inc. and the Supreme Rice Mill in Case No. 15-CC-1;

a charge having been duly filed by Loving Rice Mills, owned and operated by Monte Loving in Case No. 15-CC-2; a charge having been duly filed by Louisiana State Rice Milling Co., Inc. in Case No. 15-CC-3; a charge having been duly filed by Kaplan Rice Mills, Inc. in Case No. 15-CC-4, and the General Counsel of the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, and to avoid unnecessary costs or delay,

It Is Hereby Ordered, pursuant to Section 203.33 (b) of National Labor Relations Board Rules and Regulations—Series 5, that these cases be, and they hereby are, consolidated.

Dated, Washington, D. C., January 23, 1948.

On behalf of the Board:

ROBERT N. DENHAM,
General Counsel.

36 Before the National Labor Relations Board, Fifteenth Region

[Titles omitted]

COMPLAINT

37 It having been charged by The International Rice Milling Co., Inc., American Rice Milling Company, Inc., Louisiana State Rice Milling Co., Inc., Supreme Rice Mill, Inc., Monte Loving, an individual doing business as Loving Rice Mills, all at Crowley, Louisiana, and by Kaplan Rice Mills, Inc., at Kaplan, Louisiana, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A. F. of L., Crowley, Louisiana, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended (Public Law 101, Eightieth Congress, Chapter 120, First Session, hereinafter referred to as the Act), the General Counsel of the National Labor Relations Board (hereinafter referred to as the Board), on behalf of the Board, by Acting Regional Director for the Fifteenth Region, designated by the Board's Rules and Regulations, Series 5, Section 203.15, alleges as follows:

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A. F. of L., (hereinafter referred to as respondent) is a labor organization within the meaning of Section 2, subsection (5) of the Act, and has its principal office at Crowley, Louisiana.

2. (1) The International Rice Milling Co., Inc., (hereinafter referred to as International), a Louisiana corporation, has its principal office at Crowley, Louisiana, where it operates a plant

for milling rice. In connection with its operations at its Crowley, Louisiana, plant during the year 1946 it purchased 153,101 barrels of rough rice of which approximately 9% was received from points outside the State of Louisiana. During the same year it processed 16,935,900 pounds of clean rice, approximately 77% of which was shipped to points outside the State of Louisiana.

38 (2) American Rice Milling Co., Inc. (hereinafter referred to as American), a Louisiana corporation, has its principal office at Crowley, Louisiana, where it operates a plant for milling rice. In the course and conduct of its operations at Crowley, Louisiana, during the year 1946, it purchased 230,135 barrels of rough rice of which approximately 7.31% was received from points outside the State of Louisiana. During the same year it processed 24,855,668 pounds of rice of which 19,258,100 pounds were shipped to points outside the State of Louisiana.

(3) The Louisiana State Rice Milling Co., Inc. (hereinafter referred to as Louisiana State), a Louisiana corporation, has its principal office at Crowley, Louisiana. It operates three plants located at Crowley, Rayne and Abbeville, Louisiana, engaged in milling rice. In connection with its operations at all of its three plants during the year 1946, it purchased 1,187,327 barrels of rough rice of which approximately 20% was received from points outside the State of Louisiana. During the same year it processed 130,803,500 pounds of rice, approximately 90% of which was shipped to points outside the State of Louisiana.

(4) Supreme Rice Mills, Inc. (hereinafter referred to as Supreme), a Louisiana corporation, has its principal office at Crowley, Louisiana where it operates a plant for milling rice. In connection with its operations during the year 1946, it purchased 300,000 barrels of rough rice of which approximately 20% was received from points outside the State of Louisiana. During the same year it processed 33,000,000 pounds of rice, approximately 95% of which was shipped to points outside the State of Louisiana.

(5) Monte Loving, an individual doing business as Loving Rice Mills (hereinafter referred to as Loving), has his principal
39 office at Crowley, Louisiana, where he operates a plant for milling rice. In connection with his operations, during the year 1946 he purchased 180,247 barrels of rough rice of which 47,204 barrels were received from points outside the State of Louisiana. During the same year he processed 20,000,000 pounds of rice, approximately 98% of which was shipped to points outside the State of Louisiana.

(6) Kaplan Rice Mills, Inc. (hereinafter referred to as Kaplan), a Louisiana corporation, has its principal office at Kaplan, Louisi-

ana, where it operates a plant for milling rice. In connection with its operations during the year 1946 it purchased 500,000 barrels of rough rice of which approximately 50% was received from points outside the State of Louisiana. During the same year it processed 50,000,000 pounds of rice, approximately 60% of which was shipped to points outside the State of Louisiana.

(7) Texas and New Orleans Railroad (hereinafter called Texas Railroad) is a Texas corporation engaged in the business of transporting freight and passengers in the State of Louisiana. In connection with its business, it owns and operates railroad equipment, rights-of-way, tracks, switches, public sidings and public team tracks in and around Crowley, Rayne and Abbeville, Louisiana.

(8) Guy A. Thompson, a resident of St. Louis, Missouri, is a duly qualified Trustee of the Property of the New Orleans, Texas and Mexico Railroad Company (hereinafter referred to as New Orleans Railroad) by virtue of an order of the U. S. District Court for the Eastern Division, Eastern Judicial District of Missouri in the proceedings entitled "In the Matter of Missouri Pacific Railroad Company, Debtor", Docket No. 6935 of the said Court. As such, the said Thompson operates the properties of New
40 Orleans Railroad. The New Orleans Railroad owns and operates railroads, railroad equipment, rights-of-way, tracks, switches, public sidings and public team tracks in and around Crowley, Louisiana.

(9) Paul T. Doerle, Pauline A. Davant, Thelma B. Doerle, Frances C. Doerle, Harold E. Doerle, Paul A. Doerle and Robert L. Doerle are co-partners doing business as The Sales and Service House (hereinafter called The Sales House) in New Iberia, Louisiana, where they are engaged in the business, among others, of selling feed and grain.

(10) The Texas Railroad, transports and handles goods, articles and commodites shipped to and from the respective plants, as set out above, of International, American, Louisiana State, Supreme, and Kaplan at Crowley, Rayne, Abbeville, and Kaplan, Louisiana, for and on behalf of these companies and others.

(11) The New Orleans Railroad transports and handles goods, articles and commodities shipped to and from the respective plants of International, American, Louisiana State, Supreme and Loving, at Crowley, Louisiana, for and on behalf of these companies and others.

(12) The Sales House purchases and handles goods, articles, and commodities from Kaplan.

(13) Respondent is not now, and has never been, certified as the representative for the purposes of collective bargaining under the provisions of the Act, of any of the employees of International, American, Louisiana State, Supreme, Loving or Kaplan.

41 (14) Respondent, on or about September 3, 1947, called a strike of the employees of International, American and Louisiana State, and on or about September 5, 1947, called a strike of the employees of Supreme and Kaplan, and on or about September 17, 1947, called a strike of the employees of Loving, at the respective plants, as alleged above, an object thereof being to force or require the said companies, and each of them, to recognize or bargain with respondent as the representative of the employees of each of the respective companies, and placed and thereafter maintained a picket line around each of the plants of the said companies.

(15) Beginning on or about October 13, 1947, and at all times thereafter, the location of the picket lines at each of the respective plants was changed from the immediate vicinity of the struck plants and placed at some distance from them, on and across the tracks and property of both the Texas Railroad and the New Orleans Railroad leading into the respective plants.

(16) On or about September 15, 1947, October 13, and 14, 1947, and thereafter, respondent by assaults, force, violence, threats of physical harm, damage to railroad property and other reprisal measures, by written and oral communications, by coercion, intimidation, and picketing, induced and encouraged the employees of Texas Railroad and New Orleans Railroad to engage in a strike or concerted refusal in the course of their employment to transport or otherwise handle, or work on, goods, articles, and commodities, shipped to or from the aforementioned plants of International, American, Louisiana State, Supreme, Loving, and Kaplan, or to perform services in connection with the shipment of such goods, articles and commodities.

42 (17) On or about October 21, 1947, respondent, by threats, assaults, force, violence, coercion, intimidation, and pickets, induced and encouraged the employees of The Sales House to engage in a concerted refusal in the course of their employment to transport or otherwise handle, or work on, goods, articles and commodities to or from the plant of Kaplan, or to perform services in connection with such goods, articles, and commodities.

(18) The object of respondent in engaging in the conduct described in paragraphs (16) and (17) above was and is (1) to force or require The Texas Railroad, The New Orleans Railroad, The Sales House, and each of them, to cease using, handling, transport-

ing or otherwise dealing in the products of or to cease doing business with International, American, Louisiana State, Supreme, Loving, and Kaplan, and (2) to force or require International, American, Louisiana State, Supreme, Loving, and Kaplan, and each of them to recognize or bargain collectively with the respondent as the representative of the employees of the respective companies.

(19) There was no labor dispute existing between The Texas Railroad, The New Orleans Railroad, or The Sales House, or any of them, and their respective employees at any of the times or dates alleged herein.

(20) By the acts described in paragraphs (16) through (19) above, respondent, through its agents, did engage in unfair labor practices within the meaning of Section 8 (b), subsections (4) (A) and (4) (B) of the Act.

(21) The activities of respondent described above in paragraphs (16) through (19), occurring in connection with the operations of International, American, Louisiana State, Supreme, Loving and Kaplan, the Texas Railroad, the New Orleans Railroad and
43 The Sales House, described in paragraphs (2) through (12) above, and each of them, have a close, intimate and substantial relations to trade, traffic and commerce among the several states and have led and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

(22) The aforesaid acts of respondent, as set forth and described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (b), subsections (4) (A) and (4) (B), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 27th day of January, 1948, issues its Complaint against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, AFL, respondent herein.

C. PAUL BARKER,
Acting Regional Director.

44 Before the National Labor Relations Board, Fifteenth Region

[Titles omitted].

NOTICE OF CONSOLIDATED HEARING

By Order dated January 23, 1948, the General Counsel of the National Labor Relations Board, on behalf of the Board,
45 consolidated the above-entitled proceedings for the purpose of a hearing;

Please Take Notice that on the 11th day of February, 1948, at ten o'clock in the forenoon, District Courtroom, Parish Courthouse, Lafayette, Louisiana, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

Copies of the Charges upon which the Complaint is based are attached hereto.

You are further notified that, pursuant to section 203.20 of the Board's Rules and Regulations, you shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

In Witness Whereof the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint and Notice of Hearing to be signed by the Acting Regional Director for the Fifteenth Region on this 28th day of January, 1948.

C. PAUL BARKER,
Acting Regional Director, Fifteenth Region,
National Labor Relations Board.

631 Federal Office Building,
New Orleans 12, Louisiana.

[Affidavit and Return receipts omitted.]

* * * * * * *

46 Before the National Labor Relations Board, Fifteenth Region

[Titles omitted]

47 PETITION FOR EXTENSION OF HEARING

To the Honorable, the Regional Director National Labor Relations Board in and for the Fifteenth Region:

The petition and motion of Aubrey B. Hirsch, Esq., of counsel for International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, in the above numbered and entitled cause with respect represents:

1. That by order dated January 23, 1948, the general counsel of the National Labor Relations Board on behalf of the Board consolidated the above entitled proceedings for the purpose of a hearing.

2. That the Honorable C. Paul Barker, Acting Regional Director of said Board set hearing for the above matter on the 11th day of

February, 1948, at 10 o'clock A. M. in the District Courtroom, Parish Courthouse, Lafayette, Louisiana, on the allegations set forth in the complaint of the above entitled matter;

3. That on February 9, 1948, at 10 o'clock A. M. in the District Court of the United States for the Western District of Louisiana, said Local 201 has been ordered to show cause why it should not be enjoined and restrained from doing the acts alleged in the captioned matter;

4. That said Local 201 is at present under preliminary injunction issued by Judge Paul DeBaillon of the Fifteenth Judicial District Court which injunction restrains Local 201 from picketing the switch tracks leading into the plants of American, Louisiana, Supreme, International, Kaplan and Loving Rice Mills and from in any way interfering with Texas & New Orleans and Missouri-Pacific Railroad Companies, its agent, and employees in moving cars to
48 and from public loading tracks or public team tracks;

5. That the undersigned counsel desires to withdraw from the above case and that Mr. Chris J. Dixie of Houston, Texas, plans to take over as counsel for said Local 201;

6. That it will not be possible for said Chris J. Dixie to adequately prepare a defense to the complaint filed by the Regional Director of the National Labor Relations Board.

Wherefore, petitioner prays that the dates set by the Regional Director on February 11, 1948, in Lafayette, Louisiana for the hearing on the above referred to complaint be extended for a period of at least two (2) weeks from date thereof.

AUBREY B. HIRSCH.

Duly sworn to by Aubrey B. Hirsch. Jurat omitted in printing.

49 [Proposed Order Omitted]

Before the National Labor Relations Board

[Titles omitted]

ORDER POSTPONING HEARING

50 Good cause having been shown that the date of hearing in the above matter, scheduled for February 11, 1948, should be postponed,

It Is Hereby Ordered that the hearing in the above-entitled matter be and the same hereby is postponed to the 25th day of February, 1948, at the same time and place.

Dated at New Orleans, Louisiana, this 5th day of February, 1948.

JOHN F. LEBUS,
Regional Director National Labor Relations Board, Fifteenth Region.

[Affidavit and Return Receipts omitted.]

* * * * * * *

51 Before the National Labor Relations Board, Fifteenth Region

[Titles omitted]

MOTION FOR CONTINUANCE AND RESETTING OF HEARING, ETC.

Now comes the respondent, Local 201 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers
52 of America, A. F. of L., and respectfully moves for a continuance and resetting of the hearing in the above entitled and numbered cause and respectfully alleges as grounds therefor, as follows:

That there exists an unavoidable conflict in setting between this case and another in which counsel for respondent is engaged and prepared for trial.

Said case is Alamo Express, Inc. vs. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 657, e tal., pending under cause F-44851 in the District Court of Bexar County, Texas, 57th Judicial District, which proceeding is an injunction suit which has been specially set by the said Court on its docket, which cause was set prior to the setting of the present proceeding before the National Labor Relations Board and is a matter of urgency and precedence over other causes on the docket of said Court, which proceeding is now in recess subject to hearing for appropriate temporary injunction orders to be issued by said Court.

Said cause is set at San Antonio, Texas, for February 26, 1948 and it is physically impossible for the undersigned counsel to attend and participate in both trials.

Respondent alleges that this continuance is not sought for delay only but in order that respondent will have the benefit of representation by counsel at the hearing and in order that justice may be done.

Wherefore, respondent prays that this cause be reset at a time convenient to the National Labor Relations Board, but as
53 soon after the week of March 1, 1948 as suits the convenience of the Board.

Respectfully submitted,

CHRIS DIXIE,
Counsel for Respondent.

Duly sworn to by Chris Dixie. Jurat omitted in printing.

54 Before the National Labor Relations Board

[Titles omitted]

ORDER POSTPONING HEARING AND CHANGING PLACE OF HEARING

Good cause having been shown that the date of hearing in the above matter, scheduled for February 25, 1948, should be
55 postponed, and that the place of hearing in Lafayette, Louisiana, should be changed.

It Is Hereby Ordered that the date of hearing be, and hereby is, postponed to March 10, 1948, at 10:00 a. m., and that the place of hearing be, and hereby is, changed to the Parish Court house, Crowley, Louisiana.

Dated this 21st day of February, 1948.

JOHN F. LEBUS,
Regional Director National Labor Relations Board Fifteenth Region.

[Affidavit and Return Receipts omitted.]

* * * * * * * *

56 Before the National Labor Relations Board

[Titles omitted]

ORDER POSTPONING HEARING

It Is Hereby Ordered that the hearing in the above-entitled matter be and the same hereby is postponed from the 10th
57 day of March, 1948, to the 25th day of March, 1948, at the same time and place.

Dated at New Orleans, Louisiana, this 5th day of March 1948.

JOHN F. LEBUS,
Regional Director National Labor Relations Board, Fifteenth Region.

[Affidavit and Return Receipts omitted.]

* * * * * * * *

Before the National Labor Relations Board, Trial Examining Division, Washington, D. C.

[Titles omitted]

ORDER DESIGNATING TRIAL EXAMINER

58 It Is Hereby Ordered that Frederic Parkes, 2nd, act as Trial Examiner in the above consolidated cases and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 5, of the National Labor Relations Board.

Dated, Washington, D. C., March 25, 1948.

WILLIAM R. RINGER,
[SEAL.] *Chief Trial Examiner.*

59 Before the National Labor Relations Board, Fifteenth Region

[Titles omitted]

REQUEST FOR LEAVE TO FILE ANSWER

Under the rules and regulations of the National Labor Relations Board, respondent respectfully asks leave to file its answer, hereto attached, and in support thereof respectfully shows the Regional Director that good cause therefor exists in that witnesses, other evidence, and information pertaining to said cause have been spread over long distances and inaccessible to counsel; that it has not been possible to make answer in said cause prior to the date hereof for the reasons stated; that the necessity for this leave has heretofore been communicated to the Regional Director; that as a result of time consumed in the investigation and preparation of the attached answer, substantial admissions are made thereby which will facili-
60 tate the hearing of this cause; that the principal substance of this answer has heretofore been communicated to the office of the Regional Director in order to avoid surprise or inconvenience to the Board.

Wherefore, respondent prays that its attached answer be accepted and filed by leave of the Board.

CHRIS DIXIE,
Counsel for Respondent.

Duly sworn to by Chris Dixie. Jurat omitted in printing.

61 Before the National Labor Relations Board, Fifteenth Region

[Titles omitted]

RESPONDENTS' ANSWER

62 To the National Labor Relations Board:

Respondent respectfully answers the complaint of the Board in the above styled cause as follows:

I

Respondent admits the allegations of the following paragraphs: I, II, III, IV, V, VI, VII, VIII, IX, X, XI, and XII.

II

As to Paragraph XIII, respondent admits lack of certification, but it alleges that it is duly authorized representative for purposes of collective bargaining pursuant to the Act as amended of the employees of the companies named in the complaint.

III

As regards Paragraph XIV, the strikes as alleged are admitted but it is specially denied that an object thereof was to force or require the said companies to recognize or bargain with respondent in any manner or any circumstances which constitutes a violation of the Act as amended. In this connection respondent alleges that the strike was called for organizational purposes as well as lawful recognition purposes and for the purpose of peaceful and orderly persuasion by conversation, picket lines and other lawful means of communication to both employers and employees involved, and for purposes of lawful concerted action to improve and further solidify our organization and that said strikes were therefore lawful primary strikes and picketing for organizational and recognition purposes, as authorized by the Act as amended.

63 IV

The allegations of Paragraph XV of the complaint are denied insofar as they imply the removal of picket lines and their placement at improper distances from the plants, and insofar as the said paragraph alleges or implies if it does that any picketing was directed against the property of the Texas Railroad and the New Orleans Railroad.

V

The allegations of Paragraph XVI are denied. The allegations of Paragraph XVII are denied. The allegations of Paragraph XVIII are denied. The allegations of Paragraph XIX are not within the knowledge of respondent. The allegations of Paragraph XX are denied. The allegations of Paragraph XXI are denied. The allegations of Paragraph XXII are denied.

VI

By way of special defense respondent alleges that it, as a labor organization, and its individual members, are engaged in a lawful, peaceful, primary strike and picketing for organizational and recognition purposes authorized by both Statute and Constitution of the United States; that pursuant thereto respondent and its members are exercising their constitutional right of Freedom of Speech, Freedom of Assembly under the First Amendment of the Constitution of the United States, which said constitutional privileges are protected by that Amendment and likewise by the Fifth Amendment of the Constitution of the United States.

64

VII

In this connection respondent alleges that it has engaged in lawful and peaceable picketing and communication of ideas at proper times and places, and especially upon the public streets and sidewalks without unlawful interference with ingress and egress.

VIII

In the foregoing connection respondent prays and demands as a matter of constitutional right that any order of cease and desist issued by the Board be so specifically framed as to not constitute a cloud or encumbrance upon the unhampered exercise of constitutional rights and so as not to reduce or impair the constitutional right of respondent and its members peacefully to exercise such rights upon the public streets and other proper places in order that they may fully and effectively advertise the facts relevant to their dispute.

IX

For special defense respondent alleges on information and belief that the charges in this cause have been filed by and have been initiated by the companies named in the complaint in Paragraphs II to VI, and such companies being the parties against whom primary picketing is directed and from whom recognition is sought, and at whose places of business picket lines pursuant to such dispute

are lawful, and since under the Act as amended, the refusal of any individual to cross said picket line is a privilege, respondents therefore assert that such companies have no status to institute proceedings complaining of secondary boycott or secondary picketing
65 which under the Act as amended may be filed by persons who are neutrals to the labor dispute.

X

For special defense respondents further assert that the companies named in Paragraphs VII and VIII are common carriers by rail engaged in interstate commerce and are subject to the jurisdiction of the Railway Labor Act, and they are not "employers" within the meaning of the Act so that the allegations of violations of the Act as amended in Sections 8(b), sub-sections (4) (A) and (4) (B) and Section 2, sub-sections (6) and (7) of the Act are insufficient in law.

Wherefore, respondent prays that this cause be dismissed. In the alternative respondent prays that any so-called cease and desist order issued herein be so restricted as to not becloud or impair the constitutional and statutory rights of respondent to advertise in public places by all peaceable and lawful means the facts deemed by them relevant to their dispute.

COMBS & DIXIE,
By CHRIS DIXIE,
Attorneys for Respondent.

809 State National Bank Bldg.,
Houston, Texas.

1948 Apr 2 PM 7.03

S.NSB 178 NL PD-New Orleans La 2

Chief Trial (Sic) Examiner—
National Labor Relations Board Rochambeau
Bldg 815 Connecticut Ave WashDC—

66 Reference cases 15-CC-1, 2, 3, and 4. 1Due to size of Transcript and delay in obtaining same request extension of fifteen days additional for filing briefs—

BALDWIN, HASPEL & MOLONY,
KAUFMAN & ANDERSON,
Attorneys for Complainants.

15-CC-1, 2, 3, 4.

April 5, 1948.

Kaufman & Anderson
Att.: E. R. Kaufman, Esq.
Kaufman Bldg.
Lake Charles, La.

Baldwin, Haspel & Molony
Att.: L. A. Molony, Esq. and C. Meyer III, Esq.
1108 Richards Bldg.
New Orleans, La.

Davidson & Davison
Att.: J. J. Davidson, Jr.
La Fayette, La.

C. Paul Barker, Chief Legal Officer
Natl. Labor Relations Board
631 Federal Office Bldg.
New Orleans, La.

Combs & Dixie
Att.: Chris Dixie, Esq.
State Nat'l Bank Bldg.
Houston, Texas

67 Aubrey Hirsch, Esq.
405 Triad Bldg.
Baton Rouge, La.

Milling, Godchaux, Sall & Milling
Att.: J. B. Miller, Esq.
1122 Whitney Bldg.
New Orleans, La.

Re Rice Milling et al., Cases 15-CC-1, 2, 3, and 4: At the request of attorneys for Complainants, time to file briefs is hereby extended to April 21.

GEORGE BOKAT,
Acting Chief Trial Examiner.

206 Wa No 4-20-48 345PM

William R Ringer Chief Trial Examr NLRB WA

Re Rice Mill cases 15-CC-1, 15-CC-2, 15-CC-3 and 15-CC-4. Request extension of time for filing brief with Trial Examiner this matter to Friday April 23. Stenographic situation prevents completion final copy prior this date.

C PAUL BARKER NLRB No. 15-CC-1 15-CC-2 15-CC-3 15-CC-4 23

SD 348PM

68 April 21, 1948

C. Paul Barker, Chief Legal Officer
Natl. Labor Relations Board
631 Federal Office Bldg.
New Orleans, La.

E. R. Kaufman, Esq.
Kaufman Bldg.
Lake Charles, La.

Chris Dixie, Esq.
State National Bank Bldg.
Houston, Texas

J. B. Miller, Esq.
Whitney Bldg.
New Orleans, La.

Monroe and Lemann
Att: Mr. Nicholas Kalalan
Whitney Bank Bldg.
New Orleans, La.

Baldwin, Haspel & Molony
Att: Lawrence A. Molony & Conrad Meyer
1108 Richards Bldg.
New Orleans, La

Aubrey Hirseh, Esq.
405 Trial Bldg.
Baton Rouge, La.

J. J. Davidson, Esq.
Lafayette, La.

69 Re Rice Milling, cases 15-CC-1, 15-CC-2, 15-CC-3 and 15-CC-4: At the request of Counsel for the General Counsel, time to file briefs is hereby extended to April 23.

WILLIAM R. RINGER,
Chief Trial Examiner.

121 WA No 5-21-48 517P

Frederick B. Parks, Trial Examiner NLRB WA

Re. Teamsters 15-CC-1 to 15-CC-4. Due to Stenographic Log-Jam request extension of time to file motions to correct transcript until Tuesday May 25.

C. PAWL BARKER, NLRB No

15 1 15 4 25
DB 518P

May 24, 1948.

C. Paul Barker, Chief Legal Officer
National Labor Relations Board
631 Federal Office Building
New Orleans, La.

E. R. Kaufman, Esq.
Kaufman Building
Lake Charles, La.

Chris Dixie, Esq.
State National Bank Bldg.
Houston, Texas

70 Baldwin, Happel & Molony
Att: Lawrence A. Molony & Conrad Meyer
1108 Richards Building
New Orleans, La.

Aubrey Hirsch
405 Triad Building
Baton Rouge, La.

Re: Rice Milling, case Nos. 15-CC-1, 2, 3, and 4. At the request of Counsel for the General Counsel, time to file Motions to Correct Transcript extended to May 25.

FREDERIC B. PARKS, 2ND,
Trial Examiner.

Before the National Labor Relations Board, Fifteenth Region

[Title omitted]

MOTION TO CORRECT RECORD

To Honorable Frederick B. Parks, II, Trial Examiner, National Labor Relations Board.

71 Now comes the undersigned and moves to correct the transcript of testimony in the above entitled matter in the following particulars:

Page 17, line 13	The word "unless" to "to elecit"
Page 17, line 19	After the word "is" add the words "ratione materiae"
Page 17, line 20	Strike the words "in this" and substitute the words "at any"
Page 20, line 16	Add after the word "Congress" the following: "To exclude this class of cases"

Page 20, line 17	Strike the words "not" and substitute "Not"
Page 21, line 23 and 24	Substitute "we" for "I"
Page 22, line 3	Strike the words "September report" and substitute "Senate reports"
Page 22, line 4	Chance the figure 11.6 to 1126.
Page 22, line 10	Strike the whole of line 10 and substitute as follows: "apply to unfair labor practices of labor organizations representing employees of railroads"
Page 22, line 11	Substitute "this" for the word "their"
Page 22, line 21	Strike the words "not any" and substitute the word "no" and strike the words "arises, even" and substitute the words "had arisen"
Page line 23	Strike the word "this" and substitute "the"
Page 24, line 20	Strike the words "the immediate fact" and substitute "there would be an immediate effect"
Page 25, line 10	Strike the word "as" and substitute "like"
72	
Page 25, line 13	Strike out the word "it" and substitute "and" and strike the word "status" and substitute the word "hiatus"
Page 25, line 17	Strike the word "definition" and substitute the word "exclusion"
Page 25, line 18	Strike the words "employer and employee" and substitute the words "railroad employers and employees"
Page 28, line 5	Strike the word "instance" and substitute the word "intent"
Page 30, line 5	Strike the words "would you" and substitute "we do"
Page 30, line 6	Strike the words "case is supported" and substitute the words "cases support this"
Page 30, line 18	Strike the word "if"
Page 32, line 8	Insert the word "not" between the words "will" and "be" and strike the second "and" appearing in the line.
Page 34, line 18	Change the figure 130,083,500 to the figure 130,803,500
Page 173, line 8	Change the written figure "fifty thousand barrels" to the numeral figure 500,000 barrels
Page 362, line 18	Change the figure "90" to the figure "9"

Wherefore the undersigned prays that the stenographic transcript in the above entiled matter be physically amended by the Trial Examiner in line with this motion.

(S.) C. PAUL BARKER,
(C. Paul Barker),
Chief Law Officer,
National Labor Relations Board Fifteenth Region.

73 May 24, 1948.

I certify that copies of this motion have been forwarded by registered mail to:

Baldwin, Haspel & Molony,
Richards Building,
New Orleans, Louisiana.

Chris Dixie,
Combs and Dixie, Attorneys,
Eighth Floor State National Bank Building,
Houston, Texas.

Milling, Godchaux, Saal and Milling,
Whitney Building,
New Orleans, Louisiana.

Aubry Hirsch, Attorney,
Triad Building,
Baton Rouge, Louisiana.

Kaufman and Anderson,
Kaufman Building,
Lake Charles, Louisiana.

Davidson & Davidson,
Attorneys at Law,
Lafayette, Louisiana.

(S.) C. PAUL BARKER.
(C. Paul Barker).

74 Before the National Labor Relations Board.

[Titles omitted]

ORDER FOR CORRECTIONS IN TRANSCRIPT OF TESTIMONY

75 A motion for correction of the record of testimony in the above-entitled matter having been made by counsel for the General Counsel, a copy of the said motion having been submitted to counsel for the respondent and the complainants, no objections to the granting of the motion having been raised by the parties, and an examination of the transcript having revealed that the proposed corrections, as well as others, should be made in order to conform said transcript to the actual proceedings,

It is hereby ordered that said motion be and it is hereby granted and made a part of the record herein.

It is further ordered that the transcript of testimony be corrected in accordance with the list of corrections attached hereto, embracing

corrections proposed by the motion of the counsel for the General Counsel and corrections proposed by the undersigned's own motion, and the Transcript Clerk of the National Labor Relations Board is hereby authorized and directed physically to enter said corrections on the face of the transcript of the testimony on file with the National Labor Relations Board.

Dated: June 23, 1948.

(S.) FREDERICK B. PARKS, II,
(Frederic B. Parkes, 2nd),
Trial Examiner.

Page	Line	Now reads	Correction
76	7	brief of proposed	brief or proposed
	17	the desire	they desire
	17	unless	to elicit
	17	that is	that is ratione materiae
	17	in this stage	at any stage
	18	case's answer	respondent's answer
	20	of Congress	of Congress to exclude this class of cases
	20	not law	no law
	21	I	we
	21	I	we
	22	September report	Senate reports
	22	11.6	1126
	22	include unfiar labor practices of employees of railroads	apply to unfair labor practices of labor organizations representing employees of railroads.
	22	Their	This
	22	not any abuses	no abuses
	22	arises, even	had arisen
	22	this committee	the committee
77	24	The immediate fact	There would be an immediate effect.
	25	as	like
	25	it illogical status	an illogical hiatus
	25	definition	exclusion
	25	employer and employee	railroad employers and employees

Page	Line	Now reads	Correction
28	5	instance	intent
30	5	would you	we do
30	6	case is supported	cases support this
30	18	If the charge	The charge
31	23	As far as paragraph 9; if	As far as paragraph 9 of
32	8	will be	will not be
32	8	indefinite and in	indefinite in
34	18	130,083,500	130,803,500
173	8	fifty thousand	500,000
317	5	The record so shows	The record may show your objection.
360	25	TRMEBLE	TREMBLE
362	18	90	9
371	14	out employees	our employees
439	2	to fine	to find
78 451	9	TRIAL EXAMINER PARKS	The Board so stipulates.
451	10	Stipulation is approved	TRIAL EXAMINER PARKES: The stipulation is approved.
459	18	Licour	Lacour
462	22	supend	suspend
466	9	the felt	they felt
472	8	none supervisory	non-supervisory
472	9	none supervisory	non-supervisory
479	21	The complaint alleging.	If the complaint alleged
479	25	My recollection of his testimony is that we also give	From my recollection, his testimony would also give.

	480	3	Section (b) 4,	Section 8 (b),
	480	4	subsection, heading B of 4, that it may go far afield	subsections (4) (A) and 4 (B), make take us far afield
	480	11	on in	on it, in
	480	12	the thing	the complaint
	492	6	to fine	to find
79	498	5	When we when	When we went
	507	12	conform	informed
	562	8	should	shall
	562	9	is cumulative	is not cumulative
	570	1	to take	we take
	570	14	Metamore	Meadowmoor
	571	24	have it clearly	have clearly
	572	3	secen	scene
	572	11	the right have the pickets	the pickets have the right

80 Page 577, lines 4 through 9 are stricken and the following substituted therefor:

The procedure before the Board to be followed from that point forward, with respect to the filing of exceptions to the Intermediate Report, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 5, particularly in Section 203.46 and following sections. A summary of the more pertinent provisions will also appear at the foot of the Intermediate Report.

At Page 157, lines 13 and 14, the following is inserted:

Trial Examiner Parks:
Board's Exhibit 12 is received in evidence.

At various places throughout the record the name of the respondent appears as "International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL." The record is to be corrected to read "International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL," in all such instances.

Page 2 of the transcript of testimony is to be corrected to show the following appearance:

Monroe and Lemann, by Mr. Nicholas Kalalan, Whitney Bank Building, New Orleans, La., appearing on behalf of the complainant, Louisiana State Rice Milling Co., Inc.

(Affidavit omitted.)

* * * * * * * *

81 Before the National Labor Relations Board.

[Titles omitted]

ORDER TRANSFERRING CASES TO THE NATIONAL LABOR RELATIONS BOARD

82 A hearing in the above-entitled cases having been held before a duly designated Trial Examiner and the Intermediate Report of the said Trial Examiner, a copy of which is annexed hereto, having been filed with the Board in Washington, D. C.,

It is hereby ordered, pursuant to Section 203.45 of National Labor Relations Board Rules and Regulations, Series 5, that the

above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., July 9, 1948.

By direction of the Board:

LOUIS R. BECKER,
Acting Executive Secretary.

Note: Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint.

Your attention is specifically directed to the concluding paragraph of the Intermediate Report in respect to your right to file exceptions, briefs, and to request oral argument. Please note that exceptions and brief must be filed as separate documents.

83 Before the National Labor Relations Board

[Titles omitted]

AFFIDAVIT AS TO SERVICE

84 In the Matter of:

DISTRICT OF COLUMBIA, ss:

I, Alfred F. Clarke, being first duly sworn, on oath, saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day of July, 1948, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Intermediate Report & Order Transferring Cases to the NLRB to the following-named persons, addressed to them at the following addresses:

Kaufman & Anderson, Attorneys, Att: E. R. Kaufman, Esquire, Kaufman Building, Lake Charles, Louisiana; Monroe & Lemann, Att: Nicholas Kalalan, Esquire, Whitney Bank Building, New Orleans, Louisiana; Baldwin, Haspel & Molony, Attorneys, Att: L. A. Molony and C. Meyer, III, Esqs., 1108 Richards Building, New Orleans, Louisiana; Combs & Dixie, Attorneys, Att: Chris Dixie, Esquire, State National Bank Building, Houston, Texas; Milling, Godchaux, Sill & Milling, Att: J. B. Miller, Esquire, 1122
85 Whitney Building, New Orleans, La.; Davidson & Davidson, Attorneys, Att: J. J. Davidson, Jr., Esquire, La Fayette, Louisiana.

Plain Mail To: Louisiana State Rice Milling Co., Abbeville, Louisiana; Kaplan Rice Mills, Inc., Kaplan, Louisiana; Loving Rice Mills, Crowley, Louisiana; Int'l. Rice Milling Co., Inc., Crowley, Louisiana; American Rice Milling Co., Inc., Crowley, Louisiana; Supreme Rice Mill, Crowley, Louisiana; Int'l. Bro. of Teamsters,

Chauffeurs, Warehousemen & Helpers of America, Local 201, AFL, 539 Jefferson Street, La Fayette, Louisiana; Missouri Pacific Lines, Att: Mr. George Stohlman, Richards Build-
86 ing, New Orleans, Louisiana; Southern Pacific Lines, Att: Mr. Henry McCall, 734 Whitnel Bldg., New Orleans, Louisiana; Mr. Aubrey Hirsch, 405 Triad Bldg., Baton Rouge, Louisiana.

(S.) ALFRED F. CLARKE.

Subscribed and sworn to before me this 9th day of July, 1948.

(S.) VINCENT E. THOMPSON,
Designated Agent for the National Labor Relations Board.

360 WA No 7-19-48 325P

Frank Kleiler, Executive Sec of the Board NLRB WA

Re Teamsters Chauffeurs Warehousemen and Helpers of America 15-CC-1, 15-CC-2, 15-CC-3 and 15-CC-4. It is the intention of the General Counsel to file exceptions and briefs in support thereof to the intermediate report of Trial Examiner Frederic B. Parks, 2nd, dated June 25 and received this office July 12. The general counsel also desires to present oral argument to the Board in view of issues not yet decided by the Board and respectfully requests permission to make such oral argument.

C. PAUL BARKER NLRB No
15-CC-1 15-CC-2 15-CC-3
15-CC-4 7 2 25 12

LL 330P

87 1948 Jul 26 PM 1 21.

National Labor Relations Board—
Rochambeau Bldg—

On behalf of complainants in cases Nos. 15-CC-1, 2, 3 and 4, undersigned counsel has deposited exceptions to IR-16 66 in United States Mail. Request additional fifteen days in which to file brief—

L A Molony C Meyer 1 1 1 E R Kaufman
N Callan—

National Labor Relations Board

N.L.R.B.

CMM:LP

7/27/48

John F. LeBus, Director,

NLRB

New Orleans.

Re: International Rice Milling Company, cases Nos. 15-CC-1, 2, 3 & 4, Advise all parties time for filing exceptions and briefs extended to August Thirteenth 1948

National Labor Relations Board.

88 Before the National Labor Relations Board, Division of Trial Examiners, Washington, D. C.

[Titles omitted]

Motion for Further Extension of Time for Filing Exceptions and Brief

To the National Labor Relations Board:

Now Comes respondent, Local 201, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of
89 America, AFL, respondent in the above entitled and numbered cause and respectfully requests an extension of twenty days in which respondent may file exceptions and supporting brief to the intermediate report of the Trial Examiner heretofore rendered in said cause, and transferred to the Board under date of July 9th, 1948, and served upon respondent July 11th, 1948.

In support of such motion respondent would show the Court that the record in said cause and the intermediate report of the Trial Examiner involve new and novel questions of law in connection with which counsel is unable to make adequate presentation within the time provided by Rule 203.46 of the Rules and Regulations of the National Labor Relations Board now effective.

Wherefore, respondent prays for an extension of time until August 20th, 1948.

(S.) CHRIS DIXIE,
(Chris Dixie),
COMBS & DIXIE,
Counsel for Respondent.

State National Building,
Houston, Texas.

A copy of the foregoing motion has been served upon Mr. Paul Barker, Board attorney, New Orleans, Louisiana; Baldwin, Haspel & Malone, attorneys-at-law, New Orleans, Louisiana; E. P Kaufman, Attorney-at-Law, Lake Charles, Louisiana, Davidson & Davidson, Attorneys-at-Law, Lafayette, Louisiana, counsel for adverse parties by depositing a copy thereof in the United States mails this the .... day of July, 1948.

(S.) CHRIS DIXIE,
(Chris Dixie).

90 National Labor Relations Board

N.L.R.B.

CCM:LP

7/29/48

John F. LeBus, Director,
NLRB
New Orleans.

Re: International Rice Milling Company, Cases Nos. 15-CC-1, 2, 3, 4, Advise all parties time for filing briefs extended to August Thirteenth 1948, Combs and Dixie already so advised

NATIONAL LABOR RELATIONS BOARD.

National Labor Relations Board

N.L.R.B.

CM:LP

7/29/48

Combs & Dixie
Att: Chris Dixie, Esq.,
807-12 Station National Bldg.,
Houston, Texas.

Reurletter International Rice Milling Company, Cases Nos. 15-CC-1, 2, 3, 4, Time for filing exceptions and briefs extended to August Thirteenth 1948.

NATIONAL LABOR RELATIONS BOARD.

91 Before the National Labor Relations Board

[Titles omitted]

EXCEPTIONS TO INTERMEDIATE REPORT

92 The undersigned, counsel for complainants, in accordance with the rules and regulations, Section 203.46, Series 5, effective August 22, 1947, hereby except, in the following particulars, to the Intermediate Report of the Honorable Frederic B. Parkes, II, Trial Examiner, in the above entitled and numbered proceedings, issued on the 25th day of June, 1948 and transferred to the National Labor Relations Board by order of the Board, dated July 9th, 1948:

1

To the statement and recommendation by the Trial Examiner that the respondent should not be restrained from all picketing of the railroads, and the railroad properties and rights-of-way. (P. 20, IR-1666.)

2

To the failure of the Trial Examiner to include in the recommended order a specific prohibition against the picketing by respondent of the railroad properties, team tracks, and railroad rights-of-way leading into the rice mills. (P. 22, IR-1666.)

Respectfully submitted,

BALDWIN, HASPEL & MOLONY,
By L. A. MOLONY,
CONRAD MEYER, III,
KAUFMAN & ANDERSON,
By E. R. KAUFMAN,
MONROE & LEMANN,
By NICHOLAS CALLAN.

167 WA No 8-11-48 4-52 PM

Frank Klieler Executive Secty. of the Board NLRB WA

93 Re Intl. Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers and International Rice Milling Company, 15-CCI through 15-CC4 extension has been granted to August 13 to file exceptions and brief exceptions will be filed timely but enforced absence from office in settlement negotiations of the four salant and salant cases prevents completion of briefs in time. Request additional extension to file briefs in support of exception to August 20.

C. PAUL BARKER NLRB No
15-CC1 15-CC4 13 20

RROR 4-55 PM

File in Informal File

National Labor Relations Board

N.L.R.B.

CCM:LP

8/13/48

Baldwin, Haspel & Moloney,
Att: Lawrence A. Molony & Conrad Meyer, III Esqs.,
Richards Building,
New Orleans 12, Louisiana.

Monroe & Lehmann,
Att: Nicholas Callan, Esq.,
Whitney Building,
New Orleans 12, Louisiana.

94 John F. LeBus, Director, and
C. Paul Barker, Reg. Atty.,
NLRB
New Orleans.

Kaufman & Anderson,
Att: E. R. Kaufman, Esq.,
Kaufman Building,
Lake Charles, Louisiana.

Combs & Dixie,
Att: Chris Dixie, Esq.,
807-12 State National Bldg.,
Houston, Texas.

Re: International Rice Milling Co., 15-CC-1, 2, 3, and 4, Time for filing briefs only extended to August Twentieth 1948.

NATIONAL LABOR RELATIONS BOARD.

95 Before the National Labor Relations Board, Fifteenth Region

[Title omitted]

EXCEPTIONS TO THE INTERMEDIATE REPORT

The undersigned, Chief Legal Officer for the Fifteenth Region, on behalf of the General Counsel of the National Labor Relations Board, in accordance with the Rules and Regulations, Section 203.46, Series 5, effective August 22, 1947, hereby files the following exceptions to the Intermediate Report of the Honorable Frederic B. Parkes, II, Trial Examiner, in the above entitled and numbered proceedings issued on the 25th day of June, 1948, and transferred to

the National Labor Relations Board by order of the Board dated July 9, 1948:

1. To the finding of the Trial Examiner as set forth on Page 17, Footnote 24, that it is "unnecessary to determine . . . the picketing of the railroads in the early stages of the strike were violative of the Act."

2. To the failure of the Trial Examiner to find specifically on Page 17 of the report and later in the report that the picketing on public thoroughfares extending across the tracks of the Missouri Pacific and Southern Pacific Railroad in the early stages of
96 the strike were violative of Section 8 (b), Subsections (4) (A) and (B) of the Act, and that the picketing per se was a violation of the statute regardless of when or how it occurred.

3. To the failure of the Trial Examiner to find on page 18 of the report after the paragraph ending on line 35 that the respondent did, by the picketing across and in the vicinity of the tracks of the Southern Pacific and Missouri Pacific railroads in the early days of the strike, induce and encourage the employees of the Southern Pacific and Missouri Pacific, neutrals to the primary dispute between respondent and the complainants, to engage in a strike or concerted refusal in the course of their employment to . . . transport or otherwise handle or work on any goods, articles, material, or commodities or to perform any services with the avowed object (1) of "forcing or requiring" the Southern Pacific and Missouri Pacific "to cease . . . handling, transporting, or otherwise dealing in the products of the complainants and (2) of "forcing or requiring" the complainants "to recognize or bargain with" the respondent as "the representative of" the complainants' employees at a time when the respondent was not a certified representative of such employees.

4. The failure of the Trial Examiner to conclude that the picketing in the vicinity of and across the tracks of the Southern Pacific and the Missouri Pacific Railroads in the early days of the strike by the respondent violated Section 8 (b), subsections (4) (A) and (B) of the Act.

5. To the finding of the Trial Examiner that he does not agree that the picketing is inseparable from the unlawful conduct as appears on Page 20, Lines 36 to 53, inclusive; and to the finding of the Trial Examiner that the threats and acts of violence were episodic and isolated and the picketing did not occur in such a
97 background of violence and was not so enmeshed with acts of violence that one cannot be separated from the other.

6. To the finding of the Trial Examiner on Page 20 at Lines 48 to 53 that he will not recommend that respondent be restrained from all picketing of the railroads.

7. To the failure of the Trial Examiner to recommend that all picketing of the railroad property be restrained.

8. To the failure of the Trial Examiner to include in his recommendations appearing on Page 22 of the Intermediate Report, after the words "inducing and encouraging" on line 3, the following words, "by communications, warnings, threats, mass picketing or other picketing on or in the immediate vicinity of the property of the railroads", and his failure to include the same words after the words "inducing or encouraging" on line 19.

9. To the failure of the Trial Examiner to require that respondent notify in writing each of its members, the Brotherhood of Railroad Trainmen, Morgan Lodge 317, the Missouri Pacific and Southern Pacific Railroads, and each of the complainants, and post a copy of the said notice in the vicinity of any and all picket lines established by respondent in the vicinity of the complainants' mills.

10. To the failure of the Trial Examiner to include in his recommended notice in paragraph 3 thereof after the words "induce or encourage" the words "by warnings, threats, mass picketing or other picketing on or in the immediate vicinity of the property of the railroads.

(S.) C. PAUL BARKER,
(C. Paul Barker)
Chief Legal Officer, National Labor Relations Board, Fifteenth Region.

Dated August 12, 1948.

98

Certificate

I certify that I have caused a copy of these Exceptions to be served by registered mail this date upon the following:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, AFL, 203 First Street, Crowley, Louisiana; Baldwin, Haspel & Molony, Law Offices, Richards Building, New Orleans, Louisiana; Aubrey Hirsch, Esquire, Triad Building, Baton Rouge, Louisiana; Kaufman and Anderson, Kaufman Building, Lake Charles, Louisiana; J. J. Davidson, Esq., Davidson & Davidson, Lafayette, Louisiana; Milling, Godchaux, Saal & Milling, Attn: Mr. J. B. Miller, Whitney Building, New Orleans, Louisiana.

(S.) RICHARD C. KEENAN,
(Richard C. Kennan),
Attorney, National Labor Relations Board, Fifteenth Region.

August 12, 1948.

99 August 30, 1948.

National Labor Relations Roard,
Washington, D. C.

In re: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, and International Rice Milling Company, Inc. Cases Nos. 15-cc-1, 2, 3, and 4.

GENTLEMEN:

We have previously forwarded a brief in the above matter in connection with our exceptions to the Examiner's Report. The general counsel has requested oral argument. We would like to participate in this argument and would appreciate your advising us when the case is set for hearing before the Board.

Yours very truly,

(S.) L. A. MOLONY.
(L. A. Molony).

LAM:law

100 Before the National Labor Relations Board

Case No. 15-CC-1

In the Matter of:
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

The International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; and Joseph Dore, Sr., doing business as Supreme Rice Mill.

Case No. 15-CC-2

In the Matter of:
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

Loving Rice Mills.

Case No. 15-CC-3

In the Matter of:
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

Louisiana State Rice Milling Co., Inc.

Case No. 15-CC-4

In the Matter of:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

Kaplan Rice Mills, Inc.

DECISION AND ORDER

101 On June 25, 1948, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the complainants and the General Counsel filed exceptions and supporting briefs; none were filed by the Respondents. The requests for oral argument made by the Respondent and the General Counsel are hereby denied, inasmuch as the record and the briefs, in our opinion, adequately present the issues and the positions of the parties.[1]

The Board has reviewed the rulings of the Trial Examiner made at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, but only insofar as they are consistent with this Decision and Order.

1. The Trial Examiner found that the Respondent violated Section 8 (b) (4) (A) and (B) of the Act by picketing sidings of certain interstate railroads, subsidiaries of the Missouri Pacific and Southern Pacific, and by threatening employees of those railroads with violence for dishonoring its picket lines. We cannot
102 agree with this finding. The relevant portion of Section 8 (b) (4) (A) and (B) of the Act provides that it shall be an unfair labor practice for a labor organization to induce or encourage the "employees" of any "employer" to engage in a secondary boycott. However, Section 2 (2) and (3) of the Act

[1] The Railway Labor Executive Association also requested oral argument as *amicus curiae*. Its request is likewise denied. Although the Association has not presented its position in this matter to the Board, it was offered an opportunity to do so when the Board on August 2, 1948, granted its request for permission to file a brief herein.

provide in part that the term "employer" should not include "any person subject to the Railway Labor Act," and that the term "employee" should not include any individual "employed by an employer subject to the Railway Labor Act."

In view of the clear language of the amended Act, and in the absence of any indication in the legislative history that Congress intended a different result, we must conclude that none of the Respondent's aforesaid activities induced or encouraged *employees* of an *employer* to engage in a secondary boycott, within the meaning of Section 8 (b) (4) (A) or (B). Our conclusion in this respect is buttressed by the separate treatment that Congress has historically accorded railroads, their employees, and the organizations of their employees. In our opinion, a sudden contrary intent on the part of the Eightieth Congress should not be inferred in the absence of a clear expression in the statute that such was the Congressional purpose. We find no suggestion of such a clear expression here. Indeed, the fact that the 1947 amendments changed the definition of employee by excluding persons "employed by an employer subject to the Railway Labor Act", whereas no such exclusion was contained in the Wagner Act before amendment is, if anything, an expression of an opposite intention.

2. The Trial Examiner also found that the Respondent violated Section 8 (b) (4) (A) and (B) by attempting to prevent a Sales House truck from entering the Kaplan mill on October 21, 1947.

103 We do not agree with this finding. The Respondent's activities arose out of the *primary* picketing of the Kaplan mill, and were carried out in the immediate vicinity of that mill. Violence on the picket line is not to be condoned, but violence does not convert *primary* picketing into *secondary* action within the meaning of Section 8 (b) (4) (A) or (B).[2] As the complaint herein does *not* allege restraint and coercion of employees in violation of Section 8 (b) *(1) (A)*, we are not called upon to decide whether the Respondent's conduct toward the employees of the Sales House constituted a violation of that Section.

In view of the foregoing, we shall dismiss the entire complaint.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, International Brotherhood of

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[2] See *Matter of Oil Workers International Union, Local Union 346 (CIO)* and *The Pure Oil Company*, Case No. 8-CC-4, issued June 17, 1949.

Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL be, and it hereby is, dismissed.

Signed at Washington, D. C., this 20 day of June, 1949.

PAUL M. HERZOG, *Chairman.*
JOHN M. HOUSTON, *Member.*
JAMES J. REYNOLDS, JR., *Member.*
ABE MURDOCK, *Member.*
[SEAL.] NATIONAL LABOR RELATIONS BOARD.

104 INTERMEDIATE REPORT

Before the National Labor Relations Board, Division of Trial Examiners, Washington, D. C

Case No. 15-CC-1

In the Matter of:
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

The International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; and Joseph Dore, Sr., doing business as Supreme Rice Mill.

Case No. 15-CC-2

In the Matter of:
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

Loving Rice Mills.

Case No. 15-CC-3

In the Matter of:
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

Louisiana State Rice Milling Co., Inc.

105 Case No. 15-CC-4

In the Matter of:

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL,

and

Kaplan Rice Mills, Inc.

C. Paul Barker, Esq., W. P. Alexander, Esq., Andrew P. Carter, Esq., and *Victor G. Hess, Esq.*, for the General Counsel.

Baldwin, Haspel & Molony, by *Laurence A. Molony, Esq.*, and *Conrad Meyer, III, Esq.*, of New Orleans, La., for Kaplan, Loving, International, American, and Supreme.

E. R. Kaufman, Esq., of Lake Charles, La., and *Monroe and Lemann*, by *Nicholas Kalalan, Esq.*, of New Orleans, La., for Louisiana State.

Milling, Godchaux, Saal & Milling, by *J. B. Miller, Esq.*, of New Orleans, La., for the Missouri Pacific.

Davidson & Davidson, by *J. J. Davidson, Esq.*, of Lafayette, La., for the Southern Pacific.

Chris Dixie, Esq., of Houston, Tex., and *Aubrey Hirsch, Esq.*, of Baton Rouge, La., for the respondent.

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by The International Rice Milling Co., herein called International; American Rice Milling Co., Inc., herein called American; Louisiana State Rice Milling Co., Inc., herein called Louisiana State; Joseph
106 Dore, Sr., doing business as Supreme Rice Mill, herein called Supreme; Loving Rice Mills, herein called Loving; and Kaplan Rice Mills, Inc., herein called Kaplan,[1] and in accordance with an order of the General Counsel of the National Labor Relations Board, herein called the General Counsel,[2] dated January 23, 1948, consolidating the four cases, the General Counsel, by the Acting Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued a complaint dated January 27, 1948, against

[1] International, American, Louisiana State, Supreme, Loving, and Kaplan are at times referred to collectively herein as the complainants.

[2] This designation will also be used to refer to the attorneys on the staff of the General Counsel who presented the case in his behalf.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, AFL, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b), subsections (4) (A) and (4) (B), and Section 2 (6) and (7) of the National Labor Relations Act, as amended June 23, 1947, herein called the Act. Copies of the charges, the complaint, and notice of hearing were duly served upon the respondent and the complainants.

With respect to the unfair labor practices, the complaint, as amended,[3] alleged in substance that (1) the respondent, during the course of a strike of the complainants' mills, induced and encouraged the employees of Texas and New Orleans Railroad, hereinafter called the Southern Pacific, of New Orleans, Texas and Mexico Railroad, hereinafter called the Missouri Pacific,[4] and The Sales and Service House, hereinafter called the Sales House, to engage in a strike or concerted refusal in the course of their employment to transport or otherwise handle, or work on, goods, articles, 107 and commodities shipped to or from the complainants, or to perform services in connection with the shipment of such goods, articles, and commodities; (2) the object of such conduct on the part of the respondent was to force or require the Southern Pacific, Missouri Pacific, and Sales House to cease using, handling, transporting, or otherwise dealing in the products of, or to cease doing business, with the complainants and to force or require the complainants to recognize or bargain collectively with the respondents as the representative of the employees of the respective complainants; (3) no labor dispute existed at the dates material herein between the Southern Pacific, the Missouri Pacific, and the Sales House and their respective employees; and (4) by the foregoing acts, the respondent engaged in unfair labor practices within the meaning of Section 8 (b), subsections (4) (A) and (4) (B), of the Act.

On March 11, 1948, the respondent filed its answer, in part admitting and in part denying the allegations in the complaint, but denying that the respondent had engaged in any unfair labor practices. As special defenses, the respondent alleged that (1) its strike and picketing for organizational and recognition purposes were exercises of its constitutional right of freedom of speech and of assembly under the first and fifth amendment of the Constitution

[3] During the course of the hearing, the complaint was amended as to minor details.

[4] The Southern Pacific and the Missouri Pacific are sometimes collectively referred to herein as the railroads.

of the United States, (2) the complainants, against whom the primary strike and picketing were directed, "have no status to institute proceedings complaining of secondary boycott or secondary picketing which under the Act as amended may be filed by persons who are neutrals to the labor dispute," and (3) the Southern Pacific and the Missouri Pacific are common carriers by rail engaged in interstate commerce, are subject to the jurisdiction of the Railway Labor Act, and are not "employers" within
108 the meaning of the Act, with the consequence that the complaint's allegations of violations of the Act are insufficient in law.

Pursuant to notice, a hearing was held on March 25, 26, and 27, 1948, at Crowley, Louisiana, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the complainants, the Missouri Pacific, the Southern Pacific, and the respondent were represented by counsel and participated in the hearings. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the outset of the hearing, argument was held upon two of the special defenses urged in the respondent's answer, namely, (1) that the Missouri Pacific and the Southern Pacific were not employers within the meaning of the Act and that accordingly the respondent could not have violated the Act by encouraging their employees to engage in a secondary boycott and (2) that the complaints had "no status" to institute the proceedings. Insofar as these defenses were deemed to be motions to dismiss the complaint, they were denied. At the conclusion of the hearing the undersigned granted a motion by the General Counsel to conform the pleadings to the proof as to dates, spelling, and minor variances. Upon the conclusion of the hearing, the undersigned advised the parties that they might argue before, and file briefs or proposed findings of fact and conclusions of law, or both, with the Trial Examiner. The parties waived oral argument but briefly stated their positions. Thereafter, counsel for the complaints and for the General Counsel filed briefs with the undersigned.

109 Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Parties

International Rice Milling Co., Inc., a Louisiana corporation with its principal office and plant at Crowley, Louisiana, operates a rice mill. In connection with its operations during 1946, it purchased 153,101 barrels of rough rice, of which approximately 9 percent was

received from points outside the State of Louisiana. During the same year, it processed 16,935,900 pounds of clean rice, of which approximately 77 percent was shipped to points outside the State of Louisiana.

American Rice Milling Co., Inc., a Louisiana corporation with its principal office and plant at Crowley, Louisiana, is engaged in the operation of a rice mill. In the course and conduct of its operations during 1946, it purchased 230,135 barrels of rough rice, of which approximately 7.31 percent was received from points outside the State of Louisiana. During the same year, it processed 24,855,668 pounds of rice, of which 19,258,100 pounds were shipped to points outside the State of Louisiana.

Louisiana State Rice Milling Co., Inc., a Louisiana corporation with its principal office at Abbeville, Louisiana, is engaged in the milling of rice and operates mills at Abbeville, Crowley, and Rayne, Louisiana. In connection with the operation at its three plants during 1946, it purchased 1,187,327 barrels of rough rice, of which approximately 20 percent was received from points outside the State of Louisiana. During the same year, it processed 130,803,500
110 pounds of rice, of which approximately 90 percent was shipped to points outside the State of Louisiana.

Joseph Dore, Sr., doing business as Supreme Rice Mill has his principal office at Crowley, Louisiana, where he is engaged in the operation of a plant for milling rice. In connection with his operations in 1946, he purchased 300,000 barrels of rough rice of which approximately 20 percent was received from points outside the State of Louisiana. During the same year, he processed 33,000,000 pounds of rice, of which approximately 95 percent was shipped to points outside the State of Louisiana.

Monte Loving, an individual doing business as Loving Rice Mills, has his principal office at Crowley, Louisiana, where he operates a plant for milling rice. In connection with his operations during the year of 1946, he purchased 180,247 barrels of rough rice, of which 47,204 barrels were received from points outside the State of Louisiana. During the same year, he processed 20,000,000 pounds of rice, of which approximately 98 per cent was shipped to points outside the State of Louisiana.

Kaplan Rice Mills, Inc., a Louisiana corporation with its principal office and plant at Kaplan, Louisiana, is engaged in the milling of rice. In connection with its operations during the year 1946, it purchased 500,000 barrels of rough rice, of which approximately 50 per cent was received from points outside the State of Louisiana. During the same year, it processed 50,000,000 pounds of rice, of which approximately 60 percent was shipped to points outside the State of Louisiana.

Texas and New Orleans Railroad, a Texas corporation and an operating subsidiary of the Southern Pacific Railroad, is en-
111 gaged in the business of transporting freight and passengers in the State of Louisiana. In connection with its business, the Texas and New Orleans Railroad, herein called the Southern Pacific owns and operates railroad equipment, rights-of-way, tracks, switches, public sidings, and public team tracks in and around Crowley, Rayne, and Abbeville, Louisiana. It transports and handles goods, articles, and commodities shipped to and from the respective plants of International, American, Louisiana State, Supreme, and Kaplan, at Crowley, Rayne, Abbeville, and Kaplan, Louisiana, for and on behalf of these companies and others.

Guy A. Thompson, a resident of St. Louis, Missouri, is a duly qualified Trustee of the property of the New Orleans, Texas and Mexico Railroad Company by virtue of an order of the U. S. District Court for the Eastern Division, Eastern Judicial District of Missouri in the proceedings entitled "In the Matter of Missouri Pacific Railroad Company, Debtor," Docket No. 6935. As such, Thompson operates the properties of the New Orleans, Texas and Mexico Railroad, herein called the Missouri Pacific. The Missouri Pacific owns and operates railroads, railroad equipment, rights-of-way, tracks, switches, public sidings, and public team tracks in and around Crowley, Louisiana. It transports and handles goods, articles and commodities shipped to and from the respective plants of International, American, Louisiana State, Supreme, and Loving, at Crowley, Louisiana, for and on behalf of these companies and others.

Paul T. Doerle, Pauline A. Davant, Thelma B. Doerle, Frances C. Doerle, Harold E. Doerle, Paul A. Doerle, and Robert L. Doerle are co-partners doing business as The Sales and Service House in New Iberia, Louisiana, and are engaged in the business,
112 among others, of selling feed and grain. The Sales House purchases and handles goods, articles, and commodities from Kaplan.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the complainants. It has never been certified by the Board as the statutory representative of any employees of the complainants.

II. The unfair labor practices[5]

A. The rice milling industry in general

Crowley, Louisiana, is the center of the rice industry of the state, and is the site of 13 or 14 rice mills. Rice, which is planted in the spring months from March to May, is harvested in September, October and November. During these fall months, the rice mills work at peak capacity, drying, milling, and packaging rice. Because of limited storage facilities in most mills, it is necessary during the peak season for the rice to move as rapidly as possibly through the milling process. Some mills cease production operations at the end of the fall peak season; others carry on such work until about March when they shut down until summer. In the summer, some mills resume limited operations. The milling industry is thus seasonal in nature.

B. Organizational activities of the respondent

The respondent, a general local admitting to membership eligible employees of the rice mills and other industries in Crowley
113 and surrounding area, commenced its organizational activities among employees of the complainants in November 1946. The campaign was directed locally by Milton G. J. Broussard, president and business agent of the respondent, and by Paul Kuhns, who was secretary and treasurer of a local of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and helpers of America, A.F.L., in Baton Rouge, Louisiana, and who came to Crowley to assist in the organization and campaign of the respondent.[6] In February 1947, the respondent by letter requested each of the complainants to recognize it as the collective bargaining representative of the employees of each complainant.[7] Thereafter, vari-

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[5] Unless otherwise noted, the findings in this section are based upon substantially uncontroverted evidence.

[6] A letter sent by the respondent to Louisiana State in February 1947, was signed by Kuhns as "Secretary Treasurer Local #5 and business Manager Local #201." The record establishes and it is found that Broussard and Kuhns were agents of the respondent.

[7] Harvey E. Fuselier, manager of Supreme denied that he had ever received any communications from the respondent and testified that if Joseph Dore, Sr., owner of Supreme, had received any letters from the respondent, he would have given them to Fuselier and that Dore had denied receiving any such correspondence. Dore did not testify. Kuhns, on the other hand, stated at the hearing that the

ous negotiations ensued between the respondent and the respective complainants. In general, the complainants requested that the respondent establish proof of its claim to majority representation. With Kaplan, negotiations proceeded to the point that Kaplan agreed to accept a card check as a means of establishing the respondent's majority status, but no further steps were taken by the respondent. With Louisiana State, the respondent agreed to enter into a card check, which was held in late February or early March, 1947, but failed to establish the respondent's majority status. None
114 of the complainants ever recognized the respondent as the collective bargaining representative of their employees or entered into a contract with it. The respondent has never been certified by the Board as the statutory representative of the employees of any complainant.

C. The strike and picketing by the respondent

1. At the mills of the complainants

On September 3, 1947, the respondent instituted a strike, pursuant to the authorization previously given by its membership at a regular meeting, at International and American and at the Crowley mill of Louisiana State. On the same day, the respondent sent the following telegram to International, American, and Louisiana State:

> This is to officially advise you that undersigned committee has been selected by a majority of your employees to represent them in the present work stoppage and all matters pertaining to collective bargaining. We stand ready to meet you at your convenience and can be contacted at our office by telephone number 559.
>
> LEO CARTER,[8]
> MILTON G. J. BROUSSARD,
> PAUL KUHNS.

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respondent requested recognition from each of the complainants. Copies of these letters were not produced at the hearing. On the issue of request for recognition, other mill owners at first denied that the respondent made such requests but later corrected their testimony and stated that the requests had been made. Although this conflict in evidence is not particularly vital to the determination of the issues of the case, upon the entire record, the undersigned believes and finds that the respondent did in fact request statutory recognition of Supreme.

[8] It appears that Carter was also agent of the respondent, participating in the organizational and strike activities of the respondent early in September 1947.

On September 4 and 6, 1947, respectively, the respondent extended the strike to Louisiana State's mills at Rayne and Abbeville. Supreme and Loving were struck on September 5 and 17. Less than a majority of the non-supervisory production and maintenance em-
ployees of each mill participated in the strike and all mills
115 continued to operate throughout the strike. The Respondent established picket lines at the struck mills, patrolled by between 1 and 4 strikers. From the outset of the strike at some mills, the picket lines on public thoroughfares extended across tracks of the Missouri Pacific and Southern Pacific. Within a short time after the strike began, the pickets carried placards each bearing one of the following legends and the name of the respondent:

This is a picket line. Respect it. Do not cross it.
This job is unfair to Local 201, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.
This job unfair to organized labor.
High cost low pay blues.

2. At the railroads

Although the picket lines at some mills crossed the tracks of the Missouri Pacific and Southern Pacific servicing some of the mills, such activities in September and early October did not deter the railroad crews from performing their duties in switching cars to and from the mills. Despite the strike, the mills continued substantially normal operations.

On September 15, 1947, the respondent sent the following letter to Andrew G. Lacour, a conductor for the Southern Pacific and chairman of the grievance committee of the Brotherhood of Railroad Trainmen, Morgan Lodge 317, hereinafter called the Brotherhood, to which many of the employees of the railroad belonged:

116 This is to notify you after a duly conducted strike ballot, the workers of the following Rice Mills who are members of our organization voted unanimously to strike.
The Mills now affected are:

La. State Rice Milling Co., Inc., Abbeville, La.
La. State Rice Milling Co., Inc., Rayne, La.
La. State Rice Milling Co., Inc., Crowley, La.
Liberty Rice Mill, Kaplan, La.
Simons Warehouse ? Kaplan ? La.
Supreme Rice Mill, Crowley, La.
International Rice Mill, Crowley, La.

We request you to consider this official from the International Brotherhood of Teamsters, Cheauffers [*sic*] Warehousemen & Help-

ers of America (A. F. of L.) Local #201 and are asking you to respect our Picket Lines at the above mentioned Mills.

The purpose of the strike is to gain recignition [*sic*] for the purpose of bargaining collectiveiy and was the last step we could take after management failed to bargain collectively.

Fraternally you's,

M. G. J. BROUSSARD,
Pres. & Business Agent,
Teams. Local Union #201.

About October 13, 1947, the tactics of the strikers changed in that as the trains approached the picket lines at the struck mills, the pickets would gather in a cluster on the railroad track, holding one of the placards toward the engine. When the engine
117 approached within a few feet of the group, they dispersed and allowed the train to perform the switching operations.

On October 13, 1947, Broussard telephoned Lacour and said, according to the latter's credible testimony, "Mr. Lacour, if your men don't respect our picket lines, they are liable to be shot with buckshot." On the following day, Lacour and Raymond J. Boudreaux, a switchman for the Southern Pacific, and Hugh B. Swanzey, trainmaster for the Southern Pacific, went to Broussard's office at Crowley to discuss the strike situation. In response to Lacour's question, Broussard admitted that he had telephoned Lacour the night before and had made the statements related above. According to Lacour, Broussard "clarified the statement by saying that he could not be responsible for the men. As far as he was concerned, he just wanted to protect us and tell us that the men were just a little bit restless over the fact that we were switching and spotting cars." Swanzey testified credibly that "during the course of the conversation, there was mentioned dynamite and Mr. Lacour asked Mr. Broussard what he meant by that. Mr. Broussard told Mr. Lacour that the men were evidently prepared," although "Mr. Broussard told Mr. Lacour he had been instructed to hold violence to a minimum." Swanzey further testified that "Mr. Broussard said that all he could do, to any member of his organization, if there was any violence, would be to suspend that member." [9]

118 During the evening of October 15, 1947, Lacour received 3 telephone calls from persons who did not disclose their identity. The first two calls were to the effect, "Don't pick up any more cars." The message of the third call, made at 2 a. m., was

[9] The findings in this paragraph are based upon the credible testimony of Lacour and Swanzey. In regard to these conversations,

"If our pickets won't stop you, dynamite will." Lacour informed the train crews of the railroads of these threats and the Brotherhood instructed its membership that in performing their duties, each member should use his own discretion in determining whether it was safe to cross the picket lines.

About October 15, 1947, the respondent placed a picket line on the passing tracks of the Southern Pacific at Kaplan, Louisiana, serving Kaplan and two other business concerns. The picket line was be-

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Broussard testified as follows on direct examination by counsel for the respondent:

Q. Did you hear the testimony of Mr. Lacour, relative to a telephone conversation with you in your office?

A. That's right.

Q. Was the testimony of Mr. Lacour substantially correct?

A. Substantially, with several exceptions. I don't think all of the statements was clear as far as I am concerned.

Q. Did you at any time threaten Mr. Lacour or his people?

A. No, I relayed a message of a threat made over the phone to me to Mr. Lacour and his men.

Q. When Mr. Lacour came to see you the next day at your office, together with Mr. Boudreaux, and Mr. Swanzey, did you make it plain to Mr. Lacour at that time so he could understand that you were making no threats whatever to him?

A. I think my message was very clear.

Q. You say you never did threaten him?

A. That's right.

Boudreaux testified that on October 15, "The conversation was, [Lacour] just asked him to remove his picket line because we were not interested in the strike and he wouldn't agree. That was about all of the conversation." According to Boudreaux, there was no mention of the threats made the night before. Boudreaux did not impress the undersigned as an especially reliable witness. Inasmuch as his testimony conflicts with that of both Lacour and Broussard, it is clear that Boudreaux did not recall all the details of the conversation on October 15. In view of the fact that about October 13 and thereafter the respondent changed its picketing tactics and the pickets began to cluster in groups on the tracks of the Southern Pacific and Missouri Pacific when trains approached, as well as the undersigned's observation of the witnesses, the undersigned does not credit Broussard's testimony that he did not make threats of violence to Lacour. Rather, upon the entire record, the testimony of Lacour and Swanzey is credited on this issue.

tween 300 and 400 feet west of Kaplan's property. However,
119 none of Kaplan's employees was on strike.[10] The train crews of the Southern Pacific refused to pass the picket line and service Kaplan.

The pickets at the Abbeville plant of Louisiana State also began to gather in groups on the Southern Pacific spur tracks leading to the mill when trains were in the yards about October 13. On October 15, as a train approached to enter the plant of Louisiana State at Abbeville, a picket came from the group on the track and gave a note to the engineer of the train. The crew refused to cross the picket line. About the same time, the respondent engaged in similar picketing activities on the Southern Pacific's spur tracks leading to the Rayne plant of Louisiana State and the train crews refused to enter the mill.

At Crowley on October 15, 1947, the respondent also intensified its picketing activities by placing groups of pickets, ranging in number between 15 and 30, at various points on tracks of the Southern Pacific and Missouri Pacific servicing the mills involved herein. In some instances, the groups of pickets on the tracks were in the immediate vicinity of the mill being picketed. But in others, the cluster of pickets was some distance removed. For example, the group picketing the Missouri Pacific tracks at Supreme was 150 yards from Supreme's property and was effective in stopping
120 the train crew from performing switching for Louisiana State, whose mill was some 400 yards from the picket cluster. The train crews refused to pass the picket lines at Crowley on October 15. Although the train crews were permitted by an arrangement between the railroads and the respondent to enter the struck mills and remove loaded cars on October 16, the crews thereafter refused to cross the picket line for the duration of the picketing. A further consequence of their refusal to pass the picket lines was the cessation of service to mills who were not involved in the labor dispute but whose plants were located at points on the Missouri Pacific and

[10] The complaint alleged that the respondent called a strike of the employees of Kaplan on or about September 5, 1947. The record fails to sustain this allegation. Clarence J. Montgomery, Jr., vice-president of Kaplan, testified credibly and without substantial contradiction that none of his employees participated in a strike in September or October 1947, but that pickets of the respondent appeared at the tracks of the Southern Pacific servicing Kaplan and other industries about the middle of October. The pickets carried various signs, one being "This job unfair to" the respondent. They did not picket the plant of Kaplan proper until about October 22, when the respondent was enjoined from picketing the railroads by the Louisiana State District Court.

Southern Pacific tracks between the struck and picketed mills.[11] The Missouri Pacific and Southern Pacific rendered services to the struck mills thereafter by operating trains manned by supervisors and officials who took over the operation of the trains at the point where the picket lines crossed the tracks, entered the mills, performed the necessary switching operation, removed loaded cars, and then returned the trains to the operating crews after passing the picket lines.[12] In some instances by special arrangement with the respondent, the crews were permitted to pass the picket lines to render services to companies not involved in the dispute.[13] Two
131. of the mills obtained cars by moving them into their mills themselves from the point at which the pickets crossed the tracks and at which the train crews left the car.

From October 16 until the picketing of the railroads ceased about October 22, some of the complainants loaded their finished products by truck into railroad freight cars on "team tracks," which are siding tracks of the railroad located on their property for the general use of the public in receiving and sending merchandise by freight. In each instance, however, as soon as the complainants commenced to load such cars, the respondent placed a picket line on the team track between the car and the switch loading from the team track. Such picket lines were a considerable distance from the struck mills. For example, the Crowley mills of Louisiana State and Supreme were each about 500 yards from the team track. The regular crews of the railroad refused to cross the picket lines to remove the cars

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[11] For example, Lawrence L. Brown, general manager of the Rice City Mill Co. at Crowley, testified credibly and without contradiction that between October 14 and 22, the regular crews of the Southern Pacific and Missouri Pacific rendered no services to his mill.

[12] When the supervisors and officials of the railroad took the trains through the picket lines, the pickets continued their same activities. That is, they remained on the track until the locomotive was almost upon them before stepping off the track. In one instance, when a locomotive was being coupled to a loaded car, a picket remained in the space between the car and locomotive until forcibly removed by a special agent of the Southern Pacific.

[13] Kuhns testified that the respondent did not attempt to disrupt deliveries by the railroads to industries other than the mills herein involved and that when such deliveries were to be made, the respondent would remove the pickets or issue passes to the train crews. He admitted, however, that no statement of this general policy was given the railroads and that the pickets were not removed or passes were not issued until the railroads brought each individual case to the attention of the respondent.

loaded by the complainants. In some instances, the crews removed cars loaded by persons other than the complainants and in others the team tracks were serviced by trains operated by supervisors and officials of the railroads.

The record establishes that the railroad crews failed to cross the picket lines on and after October 15 because they feared for their safety, both on and off the job, particularly in view of the threats communicated by Brousseard to Lacour. Charles Frejean, a brakeman for the Southern Pacific, testified credibly that on October 20, 1947, when he resumed his duties near the picket line after officials of the Southern Pacific had taken the train through the picket line to bring out loaded cars at Louisiana State, one of the pickets in the group at the railroad tracks said "that he had a good mind to kick" Frejean off the track.

125 3. As to the Sales House

As previously related, the respondent established a picket line on the Southern Pacific tracks servicing Kaplan about the middle of October. On October 21, 1947, about 5:30 p. m., Charles Boutier and Arthur F. Gregory, truck drivers for the Sales House, appeared at the Kaplan plant to obtain some rice or bran for the Sales House. According to the credible testimony of Gregory, the following incident occurred when they approached the plant of Kaplan:

When [we] got up there and was driving into the mill, we met a crowd of fellows walking down by the tracks and as we approached they bade us to stop. . . . They formed a line across the road and walked back toward the truck and we stopped. They asked us where we were going. We said we were going to Kaplan, going to get some rice. They said don't you know we got a strike on. . . . We didn't know it and they said you can't go because the strike is on. You will have to go back. We agreed to that so he asked Charles Boutier, if he had driver's license. He said he had one. "Don't let nobody else drive your truck." We agreed to that. So we simply started to turn around and this fellow spoke rather rough. I asked him why he spoke that way, and he said, "That's all right, go ahead."

We went back to the highway and we stopped at the highway. Charles got out and went to the mill across the street and a fellow by the name of Mr. Montgomery [vice-president of Kaplan] came forth. He . . . came to the truck and asked me was we on our way to the mill. We said we were, and told him what the strikers . . . told us. So he said, "You want the order?" I told
123 him, yes, but I am not the driver, you will have to see the driver about that. So by that time Charles came back to the truck and he spoke to Charles about it. . . . He told us to go

down one block and go back to the rice mill and he got in the truck with us. . . . . So as we neared the track, the fellows left from across the way from where we were, running on the track, and we got there. They asked us to stop or something; making a sign. We didn't hear what they said.

We did not stop and Mr. Montgomery got out of the truck and walked on the front right side of the truck with his hand on the fender and told us to come on. We drove on across the tracks. As we crossed the tracks the fellows threw rocks at the truck and from the lights of the truck we could see the rocks passing in front by Mr. Montgomery. Mr. Montgomery stuck his head inside the cab, to keep the rocks from hitting him, I imagine, and we proceeded on to the mill.

Q. Did you hear the rocks hitting the truck?
A. Yes, sir.
Q. Were these the same men who had stopped you and turned you around and sent you back?
A. Yes, sir.
Q. Were they white fellows?
A. All white.
Q. They told you they were on strike.
A. Yes, sir.

Montgomery testified that Gregory's version of the incident was substantially correct, that rocks were thrown at Montgomery by the strikers, and that he recognized "practically all of them because I know them, they were residents of Kaplan," although at that
124 time none of the group was employed by Kaplan. He further testified that in respect to the incident "there was no picket line because this group had no banner or anything to that effect. Just a congregation of men on the street," but that earlier in the day the group had carried signs and placards used by the respondent. In view of the fact that the respondent had established a picket line on the Southern Pacific tracks near the mill of Kaplan, that the group approached the truck of the Sales House from the vicinity of the Southern Pacific tracks, that the remarks addressed by the group to the Sales House truck drivers identified the group with the picketing activities of the respondent, and that the respondent introduced no evidence in regard to the incident, the undersigned finds that the group who stopped the Sales House truck when it first appeared at Kaplan's plant and who attempted to halt it on its second appearance were pickets of the respondent.

There remains for consideration the question of whether the respondent was responsible for the activities of these pickets under the ordinary principles of the law of agency. Generally speaking, a labor organization is responsible for its agents' acts of unfair labor

practice (1) when the acts have been specifically authorized, (2) when, though unauthorized or even expressly forbidden, they have been committed within the scope of employment of the agents, or (3) when they have been subsequently ratified by the labor organization.[14] In the opinion of the undersigned, the activities of the pickets in respect to the Sales House drivers are attributable to the respondent on the "scope of employment" theory. That is, the pickets were presumably authorized to patrol the railroad tracks leading to the Kaplan mill with the purpose of attempting to
125 dissuade the railroad employees from making deliveries to the mill and from taking out loaded cars from the mill. Such patrolling required the pickets of the respondent to encounter employees of employers neutral to the dispute between the respondent and the complainants under circumstances likely to create dissidence between the two groups. It is clear that in such a setting, the blockade of the road leading to the mill by the pickets and the use of force by the pickets in the course of their patrol near the picket line, as detailed above, were incidental to the authorized patrol and should reasonably have been expected by the respondent when it established the picket line near the Kaplan mill.[15] The undersigned accordingly finds that the stopping of the Sales House truck drivers and the use of force in connection with the stoppage were within the "scope of the employment" of the pickets as agents of the respondent and that such activities are attributable to the respondent.

4. The injunctions

On October 22, 1947, pursuant to the petition of the Missouri Pacific, Paul Debaillon, judge of the Fifteenth Judicial District Court of the State of Louisiana, issued a preliminary injunction whereby the respondent was enjoined from "interfering with" the Missouri Pacific "in conducting its business as a common carrier and in particular in moving cars to and from its switch tracks leading into the plants of" American, International, Supreme, Loving, and Louisiana State and in "moving cars to and from its public loading tracks or public team tracks" in Crowley. Upon the
126 issuance of the preliminary injunction, the respondent ceased its picketing activities at the tracks of the Missouri Pacific

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[14] See Restatement of Agency, §§ 82, 83, 93, 100, 212, 216, 218, 219, 228, 230. See also Section 2 (13) of the Act.

[15] As a matter of fact, the activities of these pickets were analogous to the tactics employed by the respondent at other times during the strike. For example, the respondent's threats of violence made by the employees of the railroads should they continue to pass the picket lines, followed by mass picketing of the tracks of the railroad.

and Southern Pacific. However, it continued to picket the mills of the complainants until the latter part of 1947.

On February 17, 1948, upon the consent and stipulation of the General Counsel and the respondent, Ben C. Dawkins, Judge of the District Court of the United States for the Western District of Louisiana, issued a preliminary injunction, which, in brief, enjoined the respondent from committing any acts alleged in the complaint to be violative of the Act.

D. Conclusions

1. As to the respondent's special defenses

The respondent initially contends that the complainant's allegations of violation of Section 8 (b), subsections (4) (A) and (4) (B), are "insufficient in law," insofar as the respondent's activities respecting the railroads are concerned, because the Act's definitions of the terms "employer" and "employee" specifically exclude from the scope of the Act, respectively, "any person subject to the Railway Labor Act" and "any individual employed by an employer subject to the Railway Labor Act."[16] That is, the respondent argues that the railroads and their employees are excluded from the terms "employer" and "employee" by the Act's definitions and that any activities of the respondent in respect to them cannot be held to be violative of the Act.

127 The legislative history of the Act is not completely and directly determinative of the argument raised by the respondent, although it does indicate that the primary purpose of excluding railroad employers and railroad employees from the scope of the terms "employer" and "employee" was to preserve the principle enunciated in the earlier National Labor Relations Act, 49 Stat. 449, that the statute would not directly regulate the relationship between the railroad and their employees, who were subject to an analogous labor relations act, namely the Railway Labor Act. Thus, the report of the Joint Study Committee on Labor Relations[17] stated as follows in respect to the definition of the term "employee":

> The changes in the definition of this term are as follows . . .
>
> c. The exemption of employees of employers subject to the Railway Labor Act is to make it perfectly clear that in providing remedies from unfair labor practices of unions and their agents it was not intended to include such employees.

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[16] See Section 2 (2) and (3).

[17] Senate Report No. 105 on S. 1126, pp. 18, 19.

In respect to this section, Senator Robert Taft stated in the Congressional Record,[18]

I want to point out that railway labor has never been covered by the Wagner Act; it has always been covered by the Railway Labor Act, which provides a somewhat different procedure. We see no reason to change that situation, because there were no abuses which had arisen in connection with the operation of the Railway Labor Act. In general, we confined our amendments to the
128 bill to acts which, from evidence before the committee, were specifically shown to be abuses.

Clearly, the manifest intent of Congress in excluding the railroads and their employees from the definitions of "employer" and "employee" was to insure that neither would be governed by the terms of the Act but would still be subject to the regulations of the Railway Labor Act. For example, the activities of neither the railroads nor their employees might be held to be unfair labor practices under the Act. The exemption of the railroads and their employees being positive and direct as to the regulatory features of the Act, it does not necessarily follow that Congress intended by the reference to "employer" and "employee," to exclude railroads and their employees from the purview of Section 8 (b) (4).

That Congress did not intend to exclude railroads and their employees is manifest by the language of Section 8 (b) (4), which, as pertinent to the instant proceeding, reads as follows:

It shall be an unfair labor practice for a labor organization or its agents . . . to engage in, or to induce or encourage the employees of *any* employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring . . . *Any* employer or *other person* to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (emphasis supplied).

129 Elsewhere in Section 8 of the Act, when the word "employer" is used it is preceded by the indefinite article "an" a total of 7 times, and twice by the article "the." In subsection (4) of Section 8 (b), however, the modifying adjective "any" is used in connection with the word "employer" a total of 6 times. In Section 8 of the Act, such usage is confined solely to subsection (4) and the proviso thereto. Contracting the usage of the adjective

[18] 93 Cong. Rec. 6658.

"any" in connection with the word "employer" in subsection (4) with the use of the indefinite article "an" elsewhere in Section 8, give rise to the inference that Congress intended by the word "any" to embrace the class of employers as a whole and not merely those within the definition of employer set forth by Section 2 of the Act. That such was the Congressional intent is established, in the opinion of the undersigned, by the phrase in subsection (4) (A), any employer or other person." The word "person" is defined in Section 2 as including "one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." The word "person" therefore embraces many if not all classifications excluded from the definition of the word "employer" in Section 2 (2). Obviously, the definition of "person" would include the railroads of the instant proceeding. Since the words "any employer" in the introductory portion of subsection (4) and the words "any employer or other person" in paragraph (A) of subsection (4) refer to the same employer, the undersigned construes the latter phrase to be a controlling amplification of the meaning of the earlier phrase, "any employer." In view of the usage and meaning of the words "any" and "or other person" in Section 8 (b), subsection (4), the undersigned concludes that the railroads are employers within the meaning of Section 8 (b), subsection (4).

130 This conclusion is further buttressed by the Congressional intent, evidenced in the committee reports and debates in the Congress, that the purpose of Section 8 (b), subsections (4) (A) and (4) (B), was to remove a particular obstruction loosely termed "the secondary boycott," to the free flow of goods in interstate commerce. Nowhere in the Congressional history of the Act is there any intimation that Congress did not intend that Section 8 (b), subsections (4) (A) and (4) (B), should not apply to a situation such as the instant proceeding, where the railroads, neutrals to the primary dispute between the respondent and the complainants, became involved in the controversy through activities of the respondent. On the contrary, the prevailing intent of the statute is to remove such obstructions and to protect commerce from such injury, impairment, or interruption. Acceptance of the position advanced by the respondent would remove from the ambit of Section 8 (b), subsections (4) (A) and (4) (B), the industry possibly most directly and extensively concerned with commerce, namely, the vast railroad transportation system, would violate the clear intent of Congress in enactment of the section, and would to a considerable extent vitiate the Act. In addition, such acceptance would create an illogical hiatus in the law obviously not intended by Congress. That is, activities of the respondent directed toward certain employers within the definition of Section 2 of the Act

would be violative of Section 8 (b), subsections (4) (A) and (4) (B), yet the same activities when directed to one of the employers exempt under Section 2 of the Act would not be a violation. In the instant case the respondent's activities in respect to the Sales House would be violative of the Act, but the same activities directed toward the railroads would not be violative of the Act, thereby creating a situation whereby the respondent's own wrongdoing
131 would inure profitably to its benefit. Obviously, such an interpretation of Section 8 (b), subsections (4) (A) and (4) (B), would encourage the extension of disputes to railroads and their employees, creating an effect on commerce antipodal to that intended by Congress.

In addition, the construction urged by the respondent as to the meaning of the words "any employer" would, if accepted, create still another hiatus in the law when applied to the proviso to Section 8 (b). The proviso reads as follows:

> That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of *any employer* (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act. (Emphasis supplied.)

If the respondent's argument were accepted, it would deny the protection of the proviso to these employees otherwise protected by the statute who refused to cross a picket line established around the premises of a railroad.

In view of the foregoing considerations, the undersigned concludes and finds that the railroads and their employees are not exempt from the scope of Section 8 (b), subsections (4) (A) and (4) (B) of the Act.

As a second defense, the respondent argues, in effect, that the complaint should be dismissed because it was based upon a charge improperly filed by the complainants, who as "the principal parties" in the dispute between the respondent and the complainants
132 "are not entitled to bring the case of secondary boycott." The respondent contends that charges of violation of Section 8 (b), subsections (4) (A) and (4) (B), can be made only "neutrals" or third persons not directly involved in the primary dispute between the respondent and the complainants—i.e., the railroads or the Sales House herein—and that the complainants being primarily and directly concerned in the labor dispute have no standing to file charges of secondary boycott by the respondent against the railroads and the Sales House.

This contention is clearly without merit. The Act itself contains no restrictions or limitations as to the identity or interest of persons filing charges[19] and the Board's Rules and Regulations specifically state that "A charge that any person has engaged in or is engaging in any unfair labor practices affecting commerce may be made by any person."[20] In discussing the same provisions of the Wagner Act, 49 Stat. 449, the Supreme Court stated:

> The Act required a charge before the Board may issue a complaint, but omits any requirements that the charge be filed by a labor organization or an employee. . . . The charge is not proof. It merely sets in motion the machinery of an inquiry. When a Board complaint issues, the question is only the truth of its accusation. The charge does not even serve the purpose of a pleading. Dubious character, evil or unlawful motives, or bad faith of the informer cannot deprive the Board of its jurisdiction to conduct the inquiry.[21]

133 The undersigned accordingly finds no merit in the respondent's argument that the proceeding was improperly initiated upon charges of the complainants.[22]

Thirdly, the respondent raises a constitutional question, stating, "In addition we take the position that strike activity and picketing in this case as a whole are not sufficient as a matter of law to demonstrate any threats or coercion. . . . But the evidence shows at best a moderate exuberance on the part of unauthorized individuals and . . . under the doctrine of the Meadowmoor case, it is not sufficient to infringe on basic constitutional rights of free speech." Insofar as this statement may be considered to be an argument that Section 8 (b), (4) (A) and (4) (B), of the Act is violative of the free speech guarantees of the Constitution of the United States, it is clearly without merit, for it is inappropriate for the Board as an administrative agency to pass upon questions regarding the con-

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[19] Section 10 (b) of the Act reads, "Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board . . . shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect. . . ."

[20] National Labor Relations Board Rules and Regulations, Series 5, Sec. 203.9.

[21] *National Labor Relations Board v. Indiana & Michigan Electrical Company*, 318 U. S. 9, 17, 18.

[22] See also *Matter of Washougal Woolen Mills*, 23 N. L. R. B. 1.

stitutionality of Congressional enactments. The undersigned accordingly assumes the constitutionality of the Section.[33]

2. As to the merits.

Turning then to a consideration of the facts set forth above in relation to the prohibitions of the Act, the pertinent portions of the Act alleged by the complaint to have been violated by the respondent read as follows:

It shall be an unfair labor practice for a labor organization or its agents . . . to engage in, or to induce or encourage the
134 employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring . . . any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 9. . . .

The purpose of the respondent's primary strike against the complainants admittedly was for recognition. It seems clear that a strike for such a purpose is not in itself an unfair labor practice under the Act and that the activities of the respondent in the early period of the strike were not violative of the Act, if the somewhat desultory picketing of the Southern Pacific and Missouri Pacific tracks at a portion of the mills be disregarded.[34] In regard to its desire for statutory recognition, the record establishes that the respondent had never been certified by the Board as such representative for any of the complainant's employees; and no substan-

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[33] See *Matter of Rite-Form Corset Company, Inc.*, 75 N. L. R. B., No. 19, wherein the Board stated, "Such questions will be left to the courts. In the absence of any court decision to the contrary, the Board assumes that the Act as amended does not violate any provision of the Constitution of the United States, as alleged by the petitioner."

[34] In view of the conclusions reached *infra* as to the respondent's threats to the railroad employees and its concentrated picketing activities at the railroads in October, the undersigned finds it unnecessary to determine whether Broussards' letter to Lacour and the picketing of the railroads in the early stages of the strike were violative of the Act.

tive or probative evidence in support of its majority claim was
135 introduced at the hearing by the respondent.[25] The record clearly supports an inference that the strike activities of the respondent in September and early October manifestly failed to achieve the desired purpose of recognition of the respondent as bargaining representative of the complainants' employees. Indeed, the employees of the railroads continued to service the complainants, and the mills continued their operations at near, if not full, capacity and without any serious inconvenience.

In mid-October, the strike tactics of the respondent admittedly changed. The desultory picketing of the railroads was intensified. As trains approached, groups of pickets ranging in some instances as high as 15 or 30, gathered on the tracks, holding placards toward the locomotive. Contemporaneously with the change in picketing activities in respect to the railroads servicing the complainants, Broussard by telephone informed Lacour, an officer in the labor organization representing many of the employees of the railroads, that if the employees of the Southern Pacific and Missouri Pacific did not respect the picket lines, they might "be shot with buckshot." On the following day, this threat was confirmed and amplified by Broussard in a personal interview with Lacour, Boudreaux, and Swanzey. Thus, Broussard "clarified" his telephone conversation with Lacour by informing them that "he could not be responsible for the men" and that "the men were just a little bit restless over the fact that [the employees of Southern Pacific and Missouri Pacific] were switching and spotting cars." He furthermore
136 explained, when dynamite was mentioned, that "the men were evidently prepared." Broussard's warning that "all he could do, to any member of his organization, if there was any violence, would be to suspend that member," intensified the threats, in the opinion of the undersigned, indicating the lack of control by the respondent of its members.

The result of these threats, of which the railroad employees were informed by Lacour, and the intensified picketing on the tracks of the railroads, was the concerted refusal on the part of the train

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[25] Kuhns testified generally that the respondent represented a majority of the employees of each complainant at the time the strike began. No documentary evidence in the way of membership cards or records were introduced in evidence. In the opinion of the undersigned, Kuhns' testimony standing alone is insufficient to establish the majority status of the respondent at each of the complainant's mills. It is therefore found that the record does not establish that the respondent was the collective bargaining representative of the majority of the employees of any complainant.

crews to cross the picket lines. Their refusal, as amply established by the record, was based upon their fear of violence or reprisal upon themselves or their property by the respondent if they crossed the picket lines. The motivation for the respondent in making the threats of violence against the trainmen and in intensifying the picketing activities at the railroad tracks is shown by the following testimony of Kuhns, agent of the respondent:

Our full intention when we was picketing these mills and the railroad tracks was to perform any operation by which the trains would stop and not service those mills.

Thus, it follows that, in the words of the Act, the respondent did by the threats of violence and by its mass picketing activities did "induce or encourage the employees" of the Southern Pacific and Missouri Pacific, neutrals to the primary dispute between the respondent and the complainants, "to engage in a strike or a concerted refusal in the course of their employment to . . . transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services" with the avowed object (1) of "forcing or requiring" the Southern Pacific and the
137 Missouri Pacific "to cease . . . handling, transporting, or otherwise dealing in the products of" the complainants or "to cease doing business with" the complainants and (2) of "forcing or requiring" the complainants "to recognize or bargain with" the respondent as "the representative of" the complainants' employees at a time when the respondent was not a certified representative of such employees. The undersigned accordingly concludes and finds that by the threats of violence on the part of Broussard and by the intensive and mass picketing on the tracks of the Missouri Pacific and the Southern Pacific, the respondent has violated Section 8 (b), subsections (4) (A) and (4) (B), of the Act.[26]

Similarly, the incident between the respondent's pickets and the drivers for the Sales House was violative of the Act. When the drivers initially approached the mill of Kaplan, the respondent's pickets at the tracks of the Southern Pacific came to the street, formed a line across the street, stopped the truck, informed the drivers that a strike was in progress and that they could not enter because "the strike is on," and ordered them to retrace their course. When the drivers returned to the mill with Montgomery, vice-president of Kaplan, the pickets again assembled on the roadway leading to the mill and attempted forcibly by the throwing of stones to halt the progress of the truck into the mill. The entire incident clearly establishes that the respondent, again in the words of the

[26] The applicability of Section 8 (c) will be discussed *infra*.

Act, did "induce or encourage the employees" of the Sales House, a neutral to the primary labor dispute between the respondent and the complainants, "to engage in, a strike or concerted refusal in the course of their employment to . . . transport, or otherwise handle or work on any goods, articles, material, or commodities or to
138 perform any services" with the avowed object, as shown by Kuhns' testimony, (1) of "forcing or requiring" the Sales House "to cease . . . handling, transporting, or otherwise dealing in the products of" Kaplan or "to cease doing business with" Kaplan and (2) of "forcing or requiring" Kaplan "to recognize or bargain with" the respondent as "the representative of" Kaplan's employees at a time when the respondent was not a certified representative of such employees. The fact that the respondent was not ultimately successful in its attempt to dissuade the drivers of the Sales House from entering Kaplan's mill is immaterial. Inducement or encouragement of the Sales House employees is clearly shown. The undersigned finds that by this conduct the respondent violated Section 8 (b), subsections (4) (A) and (4) (B), of the Act.

As mentioned previously, the respondent urged that its conduct fell within the constitutional guarantee of free speech, and the undersigned has found no merit in the contention, inasmuch as the constitutionality of the Act is assumed. However, under the terms of the Act, the respondent might well raise its defense of free speech on the basis of Section 8 (c), which provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

Assuming *arguendo* that this proviso applies to Section 8 (b) as well as Section 8 (a), it is clear that it affords the respondent no protection for the respondent's activities in respect to the
139 employees of the railroads and of the Sales House. As previously found, in urging these employees to respect its picket lines, the respondent expressed threats of reprisal and force as to the railroad employees and engaged in acts of reprisal and force, namely stoning of the truck, in respect to the Sales House employees. It is therefore found that the acts engaged in by the respondent in violation of Section 8 (b), subsections (4) (A) and (4) (B), are beyond the ambit of the protection of Section 8 (c).

III. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section II, above, occurring in connection with the operations of the complainants set forth in Section I, above, have a close, intimate, and substantial

relation to trade, traffic, and commerce among the several States, and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. The remedy

It has been found that the respondent has violated Section 8 (b), subsections (4) (A) and (4) (B), of the Act. Although the strike of the railroads has presumably ceased, there is a possibility that similar acts may be repeated in the future by the respondent.[11] It will therefore be recommended that the respondent cease and
140 desist from inducing or encouraging the employees of the railroads and the Sales House or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services, with the object (1) of forcing or requiring the railroads, the Sales House, or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, the complainants or (2) of forcing or requiring the complainants to recognize or bargain with the respondent as the representative of the complainants' employees unless the respondent has been certified as the statutory representative of such employees.

At the conclusion of the hearing in summing up his position, counsel for the respondent stated,

Now, if any order is written, we are requesting the Examiner to save to us the language of that order, so that we may have clearly the right to advertise the facts we deem relevant to our dispute at the scene of the job and that if our pickets are not excessive in number and do not interfere with egress and ingress, they should be permitted at all reasonable public places and if they are at the scene of any given plant which is under dispute and in reasonable prox-

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[11] In summing up his position at the close of the hearing, counsel for the respondent stated, "Now, passing over all that, here is one thing we'd like to stress to the Trial Examiner. If the Trial Examiner recommends any order in this case, which is based upon the language of the Statute and anything further, we will be nowhere by having had this hearing. There are going to be future organizational campaigns and I think they will have the question of representation come up this very next season and it is our position that if the order is going to enforce and apply the law, it should be so written that we may be under our right altogether and not be left to any legal interpretation to arrive at those rights."

inity thereto, the right to picket should not be impaired merely because a railroad at that point crosses.

We ask this Examiner that if any order be issued, that it not impair the right that we have to solicit by peaceful means the support of anybody who may be disposed to give support. . . . We should like to have an order in which the pickets have the right to parade on public property.

141 We do not claim any right to standing in the middle of the tracks where the railroad is exercising its right of easement to come through.

Counsel for the complainants and the General Counsel, on the other hand, argue that all picketing of the properties of the railroads should be enjoined, the theory of the General Counsel being, in reliance upon the *Meadowmoor* case[28] that "the picketing is inseparable from unlawful conduct." The undersigned does not agree. The facts of the instant case are not comparable to those of the *Meadowmoor* case, in that the unlawful conduct of the respondent herein consisted principally of threats of violence followed by the equivalent of mass picketing of the railroads and the stopping and stoning of the Sales House drivers. In the opinion of the undersigned, the threats and the act of violence were episodic and isolated and the picketing did not occur in such a background of violence and was not so enmeshed with acts of violence, that the one cannot be separated from the other. The undersigned will accordingly, not recommend that the respondent be restrained from all picketing of the railroads, and nothing in the recommended order shall be construed as restraining any future action by the respondent which may be legal under Section 8 (b), subsections (4) (A) and (4) (B).

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph
142 Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., are engaged in commerce within the meaning of Section 2, subsection (6) and (7), of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

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[28] *Milk Wagon Drivers Union etc. v. Meadowmoor Dairies, Inc.*, 312 U. S. 287.

3. By inducing or encouraging the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as Trustee, and of The Sales and Service House to refuse in the course of their employment to transport goods, articles, materials, or commodities to or from, or to perform any services for, International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., with the object of forcing or requiring Texas and New Orleans Railroad; New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; and The Sales and Service House to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, such milling companies, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b), subsection (4) (A), of the Act.

4. By inducing or encouraging the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, and of The Sales and Service House to refuse in the course of their employment to transport goods, articles, materials, or commodities to or from, or to perform any services for, International Rice Milling Co., Inc., American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mill; and Kaplan Rice Mills, Inc., with the object of forcing or requiring such milling companies to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees of such milling companies at a time when such labor organization had not been certified by the Board as the representative of such employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (b), subsection (4) (B), of the Act.

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5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subsections (6) and (7), of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, the undersigned hereby recommends that International Broth-

erhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, its officers and agents shall:

1. Cease and desist from:

(a) Inducing or encouraging the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Rail-
144 road Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object of forcing or requiring Texas and New Orleans Railroad; New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; The Sales Service House; or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business, with International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc.;

(b) Inducing or encouraging the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object of forcing or requiring International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees
145 of such companies unless such labor organization has been certified by the Board as the representative of such employees.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Post in conspicuous places at the business office of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, at Crowley, Louisiana, where notices or communications to members are customarily posted, copies of the notice attached hereto as an appendix. Copies of the

erhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, its officers and agents shall:

1. Cease and desist from:

(a) Inducing or encouraging the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Rail-
144 road Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object of forcing or requiring Texas and New Orleans Railroad; New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; The Sales Service House; or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business, with International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc.;

(b) Inducing or encouraging the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object of forcing or requiring International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees
145 of such companies unless such labor organization has been certified by the Board as the representative of such employees.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Post in conspicuous places at the business office of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, at Crowley, Louisiana, where notices or communications to members are customarily posted, copies of the notice attached hereto as an appendix. Copies of the

notice, to be furnished by the Regional Director for the Fifteenth Region, shall after being signed by an official representative of Local No. 201, be posted by the respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(b) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply therewith.

It is further recommended that, unless the respondent shall within ten (10) days from the receipt of this Intermediate Report notify said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, Series 5, effective
146 August 22, 1947, any party may within twenty (20) days from the date of service of the order transferring the case to the Board pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

FREDERIC B. PARKER, II,
Trial Examiner.

Dated: June 25, 1948.

notice, to be furnished by the Regional Director for the Fifteenth Region, shall after being signed by an official representative of Local No. 201, be posted by the respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(b) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply therewith.

It is further recommended that, unless the respondent shall within ten (10) days from the receipt of this Intermediate Report notify said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

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146 August 22, 1947, any party may within twenty (20) days from the date of service of the order transferring the case to the Board pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

FREDERIC B. PARKER, II,
Trial Examiner.

Dated: June 25, 1948.

147 Appendix

Notice

To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201 AFL.

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

We Will Not induce or encourage the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object

1. Of forcing or requiring Texas and New Orleans Railroad; New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; The Sales and Service House; or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., or

148 2. Of forcing or requiring International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr. doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees of such companies unless Local No. 201, has been certified by the National Labor Relations Board as the representative of such employees.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 201, AFL,
(Labor organization),

By.....
Title of Officer

Dated:.....

147 Appendix

Notice

To All Members of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201 AFL.

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our members that:

We Will Not induce or encourage the employees of Texas and New Orleans Railroad, of New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee, of The Sales and Service House, or of any other employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services with the object

1. Of forcing or requiring Texas and New Orleans Railroad; New Orleans, Texas and Mexico Railroad Company and Guy A. Thompson, as trustee; The Sales and Service House; or any other employer to cease using, selling, handling, transporting, or otherwise dealing in the products of, or to cease doing business with, International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr., doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., or

148 2. Of forcing or requiring International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; Joseph Dore, Sr. doing business as Supreme Rice Mill; Monte Loving, an individual doing business as Loving Rice Mills; and Kaplan Rice Mills, Inc., to recognize or bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, as the representative of the employees of such companies unless Local No. 201, has been certified by the National Labor Relations Board as the representative of such employees.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL NO. 201, AFL,
(Labor organization),

By.....
Title of Officer

Dated:.....

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

(Affidavit and Return Receipts omitted.)

* * * * * * *

149 In the United States Court of Appeals for the Fifth Circuit

[Title omitted]

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a consolidated proceeding had before said Board, entitled, "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL, and the International Rice Milling Co., Inc.; American Rice Milling Co., Inc.; Louisiana State Rice Milling Co., Inc.; and Joseph Dore, Sr., doing business as Supreme Rice Mill, Case No. 15-CC-1," "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL and Loving Rice Mills, Case No. 15-CC-2," "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL and Louisiana State Rice Milling Co., Inc., Case No. 15-CC-3," and "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, AFL and Kaplan Rice Mills, Inc., Case No. 15-CC-4," such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

150 Fully enumerated, said documents attached hereto are as follows:

(1) Copy of order designating Frederic Parkes, 2nd, Trial Examiner for the National Labor Relations Board, dated March 25, 1948.

(2) Stenographic transcript of testimony taken before Trial Examiner Parkes on March 25, 26, and 27, 1948, together with all exhibits introduced in evidence.

(3) Copy of petitioners' telegram, dated April 2, 1948, requesting extension of time for filing briefs with the Trial Examiner.

(4) Copy of Acting Chief Trial Examiner's telegram, dated April 5, 1948, granting all parties extension of time for filing briefs with the Trial Examiner.

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

(Affidavit and Return Receipts omitted.)

* * * * * * *

149 In the United States Court of Appeals for the Fifth Circuit

[Title omitted]

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(4) Copy of Acting Chief Trial Examiner's telegram, dated April 5, 1948, granting all parties extension of time for filing briefs with the Trial Examiner.

(5) Copy of Chief Law Officer's telegram, dated April 20, 1948, requesting further extension of time for filing brief with the Trial Examiner.

(6) Copy of Chief Trial Examiner's telegram dated April 21, 1948, granting all parties further extension of time for filing briefs.

(7) Copy of Chief Law Officer's telegram, dated May 21, 1948, requesting extension of time to file motions to correct transcript.

(8) Copy of Trial Examiner's telegram to all parties, dated May 24, 1948, granting extension of time to file motions to correct transcript.

151 (9) Copy of Chief Law Officer's motion to correct record, dated May 24, 1948.

(10) Copy of order for corrections in transcript of testimony, dated June 23, 1948, together with copy of affidavit of service thereof.

(11) Copy of Trial Examiner Parkes' Intermediate Report, dated June 25, 1948 (annexed to item 22 hereof); copy of order transferring case to the Board, dated July 9, 1948, together with copy of affidavit of service thereof.

(12) Copy of Chief Law Officer's telegram, dated July 19, 1948, requesting permission to argue orally before the Board. (Denied in Decision and Order of June 20, 1949.)

(13) Copy of petitioners' telegram, dated July 26, 1948, requesting extension of time for filing brief.

(14) Copy of telegram, dated July 27, 1948, granting all parties extension of time for filing briefs.

(15) Copy of union's motion for further extension of time for filing exceptions and brief, received July 27, 1948.

(16) Copy of telegrams, dated July 29, 1948, granting all parties further extension of time for filing exceptions and briefs.

(17) Copy of petitioners' exceptions to the Intermediate Report.

(18) Copy of Chief Law Officer's telegram, dated August 11, 1948, requesting still further extension of time for filing briefs.

152 (19) Copy of telegram, dated August 13, 1948, granting all parties still further extension of time for filing briefs.

(20) Copy of General Counsel's exceptions to the Intermediate Report, filed by the Chief Law Officer.

(21) Copy of union's letter, dated August 30, 1948, requesting opportunity to participate in oral argument before the Board. (Denied in Decision and Order of June 20, 1949.)

(22) Copy of Decision and Order issued by the National Labor Relations Board on June 20, 1949, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as afore-

(5) Copy of Chief Law Officer's telegram, dated April 20, 1948, requesting further extension of time for filing brief with the Trial Examiner.

(6) Copy of Chief Trial Examiner's telegram dated April 21, 1948, granting all parties further extension of time for filing briefs.

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(11) Copy of Trial Examiner Parkes' Intermediate Report, dated June 25, 1948 (annexed to item 22 hereof); copy of order transferring case to the Board, dated July 9, 1948, together with copy of affidavit of service thereof.

(12) Copy of Chief Law Officer's telegram, dated July 19, 1948, requesting permission to argue orally before the Board. (Denied in Decision and Order of June 20, 1949.)

(13) Copy of petitioners' telegram, dated July 26, 1948, requesting extension of time for filing brief.

(14) Copy of telegram, dated July 27, 1948, granting all parties extension of time for filing briefs.

(15) Copy of union's motion for further extension of time for filing exceptions and brief, received July 27, 1948.

(16) Copy of telegrams, dated July 29, 1948, granting all parties further extension of time for filing exceptions and briefs.

(17) Copy of petitioners' exceptions to the Intermediate Report.

(18) Copy of Chief Law Officer's telegram, dated August 11, 1948, requesting still further extension of time for filing briefs.

152 (19) Copy of telegram, dated August 13, 1948, granting all parties still further extension of time for filing briefs.

(20) Copy of General Counsel's exceptions to the Intermediate Report, filed by the Chief Law Officer.

(21) Copy of union's letter, dated August 30, 1948, requesting opportunity to participate in oral argument before the Board. (Denied in Decision and Order of June 20, 1949.)

(22) Copy of Decision and Order issued by the National Labor Relations Board on June 20, 1949, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as afore-

said, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 21 day of September 1949.

FRANK M. KLEILER,
[SEAL.] *Executive Secretary, National Labor Relations Board.*

153 In the United States Court of Appeals for the Fifth Circuit

No. 12909

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.

versus

NATIONAL LABOR RELATIONS BOARD

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 22, 1950

On this day this cause was called, and after argument by Conrad Meyer III, Esq., for petitioners, and C. Paul Barker, Esq., Special Counsel, National Labor Relations Board, for respondent, was submitted to the Court.

In the United States Court of Appeals for the Fifth Circuit

No. 12909

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL., PETITIONERS

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition for Review of an Order of the National Labor Relations Board, Sitting at Washington, D. C.

Before HOLMES, WALLER, and BORAH, Circuit Judges

OPINION OF THE COURT—Filed June 21, 1950

HOLMES, Circuit Judge:

Petitioners, pursuant to Section 10(f) of the National Labor Relations Act, as amended,[1] are asking this court to review a decision of the National Labor Relations Board, which dismissed their charges with regard to unlawful activity on the part of the union

[1] 29 U. S. C. A., 160(f).

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[1] 29 U. S. C. A., 160(f).

directed against the employees of railroad companies transporting petitioners' commodities, for the reason that the railroad companies were not "employers" within the meaning of Section 8(b) (4) of the Act, and which also dismissed that part of their charges
154 which alleged that the union violated Section 8(b)(4), with regard to the employees of the Sales House, for the reason that the union's activities occurred in the vicinity of the plant of the "primary" employer and, therefore, were not subject to these provisions of the Act.

Petitioners are in the business of operating rice mills in and around Crowley, Louisiana, which is the center of the rice industry in that state. In 1946, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 201, A. F. L., hereinafter referred to as the union, began an organizational campaign among petitioners' employees. In February, 1947, the union could not prove its majority status among the employees. In September, 1947, the union renewed its organizational activities, and on September 3, 1947, called a strike among petitioners' employees. Enough of the employees remained on the job to keep the mills in operation. Some of those out on strike picketed the mills, and extended their picket lines across the tracks of the Missouri Pacific and Southern Pacific Railroad Companies. At first, the employees of the railroad companies paid no attention to the pickets, and continued to switch cars to and from the mills. On September 15, 1947, the union sent a letter to the chairman of the grievance committee of the Brotherhood of Railroad Trainmen, to which many of the railroad employees belonged, telling him of the union's strike at the petitioners' plants and asking him to have the railroad employees respect the picket lines. The letter did not achieve its purpose, and the railroad employees continued to cross the picket lines. On October 13, 1947, the president of the union called a representative of the Railroad Brotherhood, and told him that the railroad employees might be shot with buckshot if they did not respect the picket lines. The railroad representative went to see the union president and, during their conversation, the president told him of the restlessness of the strikers, and stated that all he could do to any member of his union who committed violence was to suspend him from the union.

On the night of October 15th, the railroad representative received three telephone calls; the last call was made at about 2.00 A. M., and threatened "if our pickets won't stop you, dynamite will." The next day the train crews were informed of these threats and instructed that, in performing their duties, each one of them should use his own discretion in deciding whether or not it was safe to cross the union's picket lines, which thereafter contained from 15 to 30 pickets on the railroads' right-of-ways. The railroad em-

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ployees, fearful of bodily injury to themselves and their families, refused to cross the picket lines. The seriousness of their refusal to shift rail cars in and out of the mills was felt by the rice farmers, who found themselves unable to harvest their crops, because
155 the mills could not dispose of the rice they had on hand, and thus could not help the farmers handle their highly perishable crops, which rapidly deteriorated unless milled and dried within a short time after being harvested.

On October 22, 1947, the railroad companies applied to the district court in Louisiana to have the picketing on its tracks enjoined, and a preliminary injunction was issued against the union ordering it to cease interfering with the operation of the railroad companies' business with petitioners' mills. The union ceased picketing the railroad tracks, but continued to picket petitioners' plants until the end of 1947. Another similar incident took place in Kaplan, Louisiana, when a large number of pickets refused to let a truck, owned and operated by the Sales House, enter to pick up a load of rice. After being turned away at one gate, the truck driver attempted to enter the rice mill by another way, but the same group of pickets stoned the truck and again prevented its entrance to the mill.

Petitioners filed charges with the Board, alleging that the union had violated Section 8(b)(4)(A) and (B) of the Act by inducing and encouraging the railroad employees and the employees of the Sales House, a grain warehouse, to cease doing business with them and to cease transporting their merchandise. As a result of these charges, a hearing was held on March 25, 1948, and the trial examiner found that the union had violated Section 8(b)(4)(A) and (B) and recommended that the Board issue an order directing the union to cease and desist from further activity along these lines. On June 20, 1949, the Board issued its decision, which dismissed petitioners' charges with regard to any wrongful activity of the union, directed against the employees of the railroad companies, because it was of the opinion that the railroad companies were not "employers" within the meaning of Section 8(b)(4)(A) and (B) of the Act; the Board also dismissed petitioners' charges which alleged that the union had violated these sections of the Act regarding the employees of the Sales House, for the reason that the union's activities had occurred in the vicinity of the plant of the primary employer and, therefore, were not subject to the provisions of Section 8(b)(4)(A) and (B) of the Act. It is the decision of the Board dismissing these charges that the petitioners are asking this court to review.

The questions presented for our determination are purely issues of law, and are two in number. First, we must decide whether an employer who is subject to the Railway Labor Act is an employer within the meaning of Section 8(b)(4)(A) and (B) of the National Labor Relations Act; second, whether the inducement of employees

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of a neutral employer not to transport goods, by picketing and other related activities conducted at the situs of a primary (struck) employer's place of business, is prohibited by Section 8(b)(4)(A) and (B) of the Act.

156 We disagree with the Board's holding that the words "any employer," as used in that section of the statute in question here, do not include railroad companies as employers. Section 8(b)(4) provides as follows:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:
>
> (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;
>
> (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 9;
>
> (C) . . .
>
> (D) . . .
>
> Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer) if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter;
>
> . . . ."

Section 2(2) defines the term "employer" as follows:

> "(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government cor-

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poration, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an
157 employer), or anyone acting in the capacity of officer or agent of such labor organization."

We are of the opinion that the situation before us now was intended to be covered by the above-mentioned Section 8(b) (4) of the Act. The purpose of Section 8(b) (4) (A) and (B) is to protect commerce from injury, impairment, and interruption, by removing obstructions like the one we have here. If the Board's view were to prevail, the industry most directly and extensively concerned with commerce, the vast railroad transportation system, would be at the mercy of ambitious unions, which could use them as a means of forcing themselves upon plants like petitioners where they do not have a majority status. There is no doubt that Congress intended to exclude railroad companies and their employees from the National Labor Relations Act in so far as the regulation of labor relations was concerned. The Railway Labor Act is a separate and earlier piece of legislation than either the Wagner Act or the National Labor Relations Act, and for that reason Congress permitted the law governing the rights and duties of the railroad companies and their employees to remain unchanged. Section 8(b) (4) of the National Labor Relations Act, as amended in 1947, as applied to this case, does not seek to enter the field of railway labor relations. Petitioners are not asking that anything be done to the railroad companies or their employees, or that they be compelled to do anything. All petitioners seek is a removal of the railroads and their employees from the scope of a labor-management conflict in which they have no interest and want no part. We think Congress provided for the removal of such obstacles from the free flow of interstate commerce when it enacted Section 8(b) (4).

A close reading of the language used in Section 8(b) (4) convinces us that, by the use of the words "any employer," Congress intended to extend the section to any and all situations relative to the one we have before us. In this particular section, the usage of the word "any," as applied to the term employer, is confined solely to subsection 4. Contrasting the usage of the word "any," as found in subsection 4, with the use of the indefinite article "an," as used elsewhere in the section, gives rise to the inference, we think, that Congress intended the word "any" to embrace the class of employers as a whole, and not merely those within the definition of "employer," as set forth in Section 2(2) of the Act. In construing a statute, it

poration, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an
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is necessary that every word be given significance and effect, and every part of the statute must be construed in connection with the whole, so as to make all parts harmonize. Thus, if Congress had intended the word "employer" to mean only such employers as defined in Section 2(2), it would have preceded the word by the indefinite article "an." Since this was not done, we think it
158 reasonable to conclude that the word "employer," as used in Section 8(b)(4), was intended to have a wider and more inclusive meaning than the definition found in Section 2(2).

A further reading of Section 8(b)(4)(A) reveals the language "forcing or requiring . . . any employer or other person to cease using, selling, handling, transporting or otherwise dealing . . ." The definition of the word "person" in the Act does not exclude railroad companies. The words "any employer," as used in Section 8(b)(4), appear to us to refer to the same employer as described in Section 8(b)(4)(A) by the words "any employer or other person." Thus we see the use of the words "any employer or other person" being used to amplify and explain the words "any employer." Since the word "person," as defined in the Act, does not exclude the railroad companies, and since it is used here in connection with the words "any employer," we think it highly persuasive of the fact that railroad companies were not intended to be excluded from the purview of Section 8(b)(4)(A) and (B) of the Act. *Noscitur a sociis*: the meaning of a word may be ascertained by reference to the meaning of words associated with it.[2]

By construing the language of the statute so as to include railroad companies within the meaning of the words "any employer," we are giving effect to the intent of Congress to stop secondary boycotts in the transportation industry. If such an interpretation is not allowed, the meaning and use of the words "transport" and "transporting," used throughout the section, would be rendered ineffective and almost useless, since the railroads transport the vast bulk of freight in this country. Courts usually will avoid interpreting a statute so as to render it ineffective, or to cause grave public injury, if there is a more reasonable interpretation that can rightfully be adopted.

We do not agree with the Board's holding that the union's activities in refusing to allow a truck owned and operated by grain warehousemen were not violative of Section 8(b)(4)(A) and (B) of the Act. The Board assigns as the reason for its holding, the fact that the union's activities arose out of primary picketing, and that, since they were carried out in the immediate vicinity of the mill, they were not violative of the Act. The Board attempts to draw a fine distinction between primary and secondary action. Although the

[2] Broom's Legal Maxims, 4th Edition, p. 374.

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term "secondary boycott" does not appear anywhere in the section in question, the section itself is often referred to as the "secondary boycott" section, and is most commonly understood to make secondary boycotts an unfair labor practice. We know of no accurate definition for the term "secondary boycott." When secondary boycotts were discussed in the Senate in connection with the
159 passage of the Taft-Hartley Act, Senator Taft said: "It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between the different kinds of secondary boycotts. So we have broadened the provision dealing with secondary boycotts as to make them an unfair labor practice." 93 Daily Congressional Record 4323 (April 29, 1947).

The statute clearly provides a remedy for the type of conduct engaged in by the union, without resort to any distinction between primary and secondary activities. If the union's activities come within the language of the statute, they constitute an unfair labor practice, regardless of whether they might have been considered a true "secondary boycott" under the old common law or under any of the modern and popular theories. The trial examiner found that the pickets refused to allow a truck, owned by the Sales House, a neutral grain warehouse operator, to enter petitioners' mill; that when it attempted to enter on another street, the pickets threw stones at it; and that the pickets did not represent a majority of petitioners' employees. The Board did not overturn any of these findings, but merely concluded that, since they occurred in the immediate vicinity of the struck employer's plant they were primary activities and not within the coverage of the statute prohibiting secondary boycotts. No decision was made on the restraint, coercion, or violence of the strikers, because not alleged in petitioners' complaint; but the Board did state that, while violence was not to be condoned, even if there was violence it would not convert primary picketing into secondary action within the meaning of the Act.

Comparing the union's activities with the plain wording of the statute, it is apparent to us that the union was attempting to induce and encourage the employees of the Sales House to refuse to transport or otherwise handle the goods and commodities of the rice mills. The purpose of such action was to compel the rice mills to recognize the union as the representative of its employees, although it did not represent a majority of the employees. There was violence as evidenced by the trial examiner's finding that the truck was stoned, though the Board did not find it necessary to rule on same. The circumstances surrounding this action, all of which the trial examiner was keenly aware of, prompted a finding by him contrary to that of the Board. We do not think the ends of justice will be

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159 passage of the Taft-Hartley Act, Senator Taft said: "It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between the different kinds of secondary boycotts. So we have broadened the provision dealing with secondary boycotts as to make them an unfair labor practice." 93 Daily Congressional Record 4323 (April 29, 1947).

The statute clearly provides a remedy for the type of conduct engaged in by the union, without resort to any distinction between primary and secondary activities. If the union's activities come within the language of the statute, they constitute an unfair labor practice, regardless of whether they might have been considered a true "secondary boycott" under the old common law or under any of the modern and popular theories. The trial examiner found that the pickets refused to allow a truck, owned by the Sales House, a neutral grain warehouse operator, to enter petitioners' mill; that when it attempted to enter on another street, the pickets threw stones at it; and that the pickets did not represent a majority of petitioners' employees. The Board did not overturn any of these findings, but merely concluded that, since they occurred in the immediate vicinity of the struck employer's plant they were primary activities and not within the coverage of the statute prohibiting secondary boycotts. No decision was made on the restraint, coercion, or violence of the strikers, because not alleged in petitioners' complaint; but the Board did state that, while violence was not to be condoned, even if there was violence it would not convert primary picketing into secondary action within the meaning of the Act.

Comparing the union's activities with the plain wording of the statute, it is apparent to us that the union was attempting to induce and encourage the employees of the Sales House to refuse to transport or otherwise handle the goods and commodities of the rice mills. The purpose of such action was to compel the rice mills to recognize the union as the representative of its employees, although it did not represent a majority of the employees. There was violence as evidenced by the trial examiner's finding that the truck was stoned, though the Board did not find it necessary to rule on same. The circumstances surrounding this action, all of which the trial examiner was keenly aware of, prompted a finding by him contrary to that of the Board. We do not think the ends of justice will be

best served if we allow the Board to overturn this finding merely because it considers all the activities to be primary instead of secondary. It seems to us that these activities became secondary when the strikers attempted to induce and encourage the employees of this neutral employer Sales House. The fact that they occurred near the struck employer's plant is not enough to draw such a distinction as the Board attempts to draw, especially where there
160 is violence. The gravamen of the offense prohibited by the statute is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some neutral employer who has no concern in the dispute, and its aim is to compel him to stop business with the employer in the hope that the employer will be induced to submit to the demands of the strikers. To allow the Board to rule such activity as prohibited by the statute not to be a violation thereof, simply because it occurred in the vicinity of the struck employer's plant, would render the section ineffective and insufficient.

The Board erred in its interpretation of Section 8(b)(4)(A) and (B), and for that reason its order dismissing petitioners' complaint is hereby set aside, and the case is remanded to the Board for further proceedings not inconsistent with this opinion.

In United States Court of Appeals

No. 12909

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.,

versus

NATIONAL LABOR RELATIONS BOARD

JUDGMENT

Extract from the Minutes of June 21, 1950

This cause came on to be heard on the petition for International Rice Milling Company, and others, for a review of an order of the National Labor Relations Board, made on June 20, 1949, "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, A. F. L., and The International Rice Milling Co., Inc.; American Rice Milling Co., Inc., Louisiana State Rice Milling Co., Inc.; and Joseph Dore, Sr., doing business as Supreme Rice Mill," "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, A. F. L. and Loving Rice Mills," "In the Matter of International Brotherhood of Teamsters, Chauf-

best served if we allow the Board to overturn this finding merely because it considers all the activities to be primary instead of secondary. It seems to us that these activities became secondary when the strikers attempted to induce and encourage the employees of this neutral employer Sales House. The fact that they occurred near the struck employer's plant is not enough to draw such a distinction as the Board attempts to draw, especially where there
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The Board erred in its interpretation of Section 8(b)(4)(A) and (B), and for that reason its order dismissing petitioners' complaint is hereby set aside, and the case is remanded to the Board for further proceedings not inconsistent with this opinion.

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feurs, Warehousemen and Helpers of America, Local 201, A. F. L., and Louisiana State Rice Milling Co., Inc.", and "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, A. F. L., and Kaplan Rice Mills, Inc." Cases Nos. 15-CC-1, 2, 3, and 4, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, the order of the Board, dismissing petitioners' complaint is hereby set aside, and that this cause be, and it is hereby, remanded to the said National Labor Relations Board for further proceedings not inconsistent with the opinion of this Court.

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161 In the United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted]

MOTION OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, ETC., LOCAL 201 TO INTERVENE—Filed July 6, 1950

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A. F. L., respectfully petitions this Honorable Court for leave to intervene in this action, in order to assert its defenses to the petition of the petitioner, in that they will be bound by a judgment in this action and the representation of their interest by existing parties may be inadequate; there are no new or additional questions, either of law or of fact which will result from such intervention; and to permit them to intervene and be joined as parties defendant would neither unduly delay nor prejudice the adjudication of the rights of the original parties.

DIXIE & RYAN,
310 Scanlan Building,
Houston, Texas,
Attorneys for Intervenor.

AL SCHULMAN,
Of Counsel.

[Certificate of Service omitted in printing.]

feurs, Warehousemen and Helpers of America, Local 201, A. F. L., and Louisiana State Rice Milling Co., Inc.", and "In the Matter of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 201, A. F. L., and Kaplan Rice Mills, Inc." Cases Nos. 15-CC-1, 2, 3, and 4, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, the order of the Board, dismissing petitioners' complaint is hereby set aside, and that this cause be, and it is hereby, remanded to the said National Labor Relations Board for further proceedings not inconsistent with the opinion of this Court.

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161 In the United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted]

MOTION OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, ETC., LOCAL 201 TO INTERVENE—Filed July 6, 1950

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A. F. L., respectfully petitions this Honorable Court for leave to intervene in this action, in order to assert its defenses to the petition of the petitioner, in that they will be bound by a judgment in this action and the representation of their interest by existing parties may be inadequate; there are no new or additional questions, either of law or of fact which will result from such intervention; and to permit them to intervene and be joined as parties defendant would neither unduly delay nor prejudice the adjudication of the rights of the original parties.

DIXIE & RYAN,
310 Scanlan Building,
Houston, Texas,
Attorneys for Intervenor.

AL SCHULMAN,
Of Counsel.

[Certificate of Service omitted in printing.]

162-163 In United States Court of Appeals

[Title omitted]

ORDER DENYING MOTION OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 201 TO INTERVENE

Extract from the Minutes of July 6, 1950

On consideration of the motion of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A. F. L., for leave to intervene in the above entitled and numbered cause,

It Is Ordered that said motion for leave to intervene be, and the same is hereby, Denied.

Clerk's Certificate to foregoing transcript omitted in printing.

164 Supreme Court of the United States, October Term, 1950

No. 313

ORDER ALLOWING CERTIORARI—Filed December 11, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1951 951420 ADD

162-163 In United States Court of Appeals

[Title omitted]

ORDER DENYING MOTION OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 201 TO INTERVENE

Extract from the Minutes of July 6, 1950

On consideration of the motion of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A. F. L., for leave to intervene in the above entitled and numbered cause,

It Is Ordered that said motion for leave to intervene be, and the same is hereby, Denied.

Clerk's Certificate to foregoing transcript omitted in printing.

164 Supreme Court of the United States, October Term, 1950

No. 313

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 313

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review, in part, the decision of the United States Court of Appeals for the Fifth Circuit issued on June 21, 1950 (R. 153-160), which set aside the Board's order dismissing an unfair labor practice complaint, and remanded the case to the Board for further proceedings not inconsistent with the court's opinion.

OPINIONS BELOW

The opinion of the Court of Appeals (R. 153-160) is reported at 183 F. 2d 21. The findings of fact,

conclusions of law, and the order of the National Labor Relations Board (R. 100-103, 104-146) are reported at 84 NLRB 360.

JURISDICTION

The decree of the Court of Appeals was entered on June 21, 1950. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Pursuant to its demand for recognition as bargaining agent a labor organization engaged in picketing in the vicinity of the employer's place of business.[1] The picketing and related activities at the employer's premises induced employees of a neutral employer not to cross the picket lines in the course of their employment. The question presented is whether by such conduct the labor organization violated Section 8 (b) (4) (A) of the National Labor Relations Act, which makes it unlawful for a labor organization to induce or encourage employees to strike or to engage in a concerted refusal to perform services for their employer, where an object thereof is to force the employer to cease doing business with any other person. A

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[1] In addition to picketing in the vicinity of the plant of Kaplan, the employer involved in this dispute, the Union also picketed certain railroads in an effort to force them to cease transporting products to Kaplan and other rice mills. The court below, reversing the Board, held that by picketing the railroads the Union violated Sections 8 (b) (4) (A) and (B). The Board does not seek review of the holding of the court below on this point.

subsidiary question is whether, the labor organization involved not having been certified as exclusive bargaining agent, its conduct violated Section 8 (b) (4) (B) of the Act, which makes it unlawful for a labor organization to induce employees to engage in a strike or other concerted refusal to perform services for their employer where an object thereof is to require another employer to recognize or bargain with a labor organization which has not been certified under the provisions of Section 9.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 15-19.

STATEMENT

Upon charges filed by six Louisiana rice mills (R. 18, 24, 28, 30),[2] the Acting Regional Director of the Board for the Fifteenth Region issued a complaint (R. 36-43) against the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A.F.L. (hereafter called the "Union"). The complaint alleged, *inter alia*, that the Union, in violation of Sections 8 (b) (4) (A) and (B) of the Act, induced and encouraged "the employees of The Sales

[2] The charging parties, also the petitioners in the court below, consisted of the International Rice Milling Company, Inc., American Rice Milling Company, Inc., Louisiana State Rice Milling Company, Inc., Supreme Rice Mill, Loving Rice Mills, and Kaplan Rice Mills, Inc.

House to engage in a concerted refusal in the course of their employment to transport or otherwise handle . . . . commodities to or from the plant of Kaplan. . . ." (R. 42). The undisputed facts relating to this incident, as found by the Trial Examiner and adopted by the Board (R. 101, 112-114, 118-119, 122-125), may be summarized as follows:

After an organizational drive in November 1946, among the employees of the six rice mills, the Union requested each of the mills to recognise it as the exclusive bargaining representative. The mills asked the Union to prove its claim to majority representation, and, when the Union failed, they refused to recognise it (R. 112-114). Without obtaining Board certification, the Union, on September 3, 1947, instituted a strike to obtain recognition, which, by September 17, extended to all of the mills except Kaplan Rice Mills (R. 114). Picket lines, patrolled by between one and four strikers, were established at all of the struck mills (R. 114-115). The pickets carried placards each bearing one of the following legends and the name of the mill (R. 115):

> This is a picket line. Respect it. Do not cross it.
>
> This job is unfair to Local 201, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L.
>
> This job unfair to organized labor.
>
> High cost low pay blues.

On October 15, 1947, the Union commenced to picket in the vicinity of the Kaplan mill, although no strike had been called there and none of the Kaplan employees were on strike (R. 118-119). The pickets carried various signs, one being "This job unfair" to the Union (R. 119, n. 10).

On October 21, 1947, a truck of the Sales and Service House, driven by two employees of that firm, appeared at the Kaplan mill to obtain some rice or bran for Sales House (R. 122). The Sales and Service House is engaged in the business of selling feed and grain, and it purchases and handles goods, articles and commodities from the Kaplan Rice Mills (R. 111-112). As the Sales House truck was about to enter the Kaplan mill, it was stopped by Union pickets who told the truck drivers that "you can't go" into the mill because "we got a strike on" (R. 122).

The Sales House drivers agreed "to go back," and they returned to the highway where they stopped and were met by a representative of the Kaplan mill (R. 122). Together with the Kaplan mill representative, the drivers returned to the mill by another route. As they crossed the railroad tracks in the immediate vicinity of the mill and proceeded to enter, rocks were thrown at the trucks by the Union pickets (R. 122-123). The drivers nevertheless proceeded on to the mill (R. 123).

On the basis of the foregoing facts, the Board, in its decision and order of June 20, 1948 (R. 100-103), concluded that the Union's conduct toward

the Sales House employees did not violate Section 8 (b)(4)(A) and (B), and accordingly dismissed the complaint in this respect. In reaching this conclusion, the Board applied the construction of Section 8(b)(4)(A) which it had adopted in *The Pure Oil Company* case, 84 NLRB 315 (R. 103, n. 2). In that case the Board, after careful consideration of the legislative history, held that Section 8 (b) (4)(A) was not intended to "outlaw any of the primary means which unions traditionally use to press their demands on employers." In the instant case, the Board stated (R. 102-103):

> The [Union's] activities arose out of the *primary* picketing of the *Kaplan* mill, and were carried out in the immediate vicinity of that mill. Violence does not convert *primary* picketing into *secondary* action within the meaning of Section 8 (b) (4) (A) or (B) [footnote omitted].[*]

The court below reversed, holding that the Union's conduct in inducing the Sales House employees to refuse to perform services for their employer at the Kaplan mill did constitute an un-

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[*] In addition to stating that it did not condone the violence on the picket line, the Board said (R. 103):

> As the complaint herein does *not* allege restraint and coercion of employees in violation of Section 8(b)(1)(A), we are not called upon to decide whether the Respondent's conduct toward the employees of the Sales House constituted a violation of that Section.

In other cases the Board has held that violence accompanying primary picketing is violative of Section 8 (b) (1) (A). *International Longshoremen's and Warehousemen's Union, CIO, et al.*, 79 NLRB 1487, 1504-1507; *United Furniture Workers of America, et al.*, 81 NLRB 886.

fair labor practice within the meaning of Sections 8 (b) (4) (A) and (B). The court stated (R. 159):

> The statute clearly provides a remedy for the type of conduct engaged in by the union, without resort to any distinction between primary and secondary activities. If the union's activities come within the language of the statute, they constitute an unfair labor practice, regardless of whether they might have been considered a true "secondary boycott" under the old common law or under any of the modern popular theories.

The court added (R. 159-160):

> The fact that [the Union's activities] occurred near the struck plant is not enough to draw such a distinction as the Board attempts to draw, especially where there is violence * * *. To allow the Board to rule such activity as prohibited by the statute not to be a violation thereof, simply because it occurred in the vicinity of the struck employer's plant, would render the section ineffective and insufficient.

Accordingly, the court set aside the Board's order dismissing the complaint and remanded the matter to the Board for further proceedings in conformity with the court's opinion.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that Sections 8 (b) (4) (A) and (B) of the Act do not permit the Board to dis-

tinguish between primary and secondary union activity.

2. In setting aside the Board's order insofar as it dismissed that portion of the complaint which alleged that the Union's inducement of the Sales House employees constituted unfair labor practices within the meaning of Sections 8 (b) (4) (A) and (B) of the Act.

REASONS FOR GRANTING THE WRIT

1. The holding of the court below that Section 8 (b) (4) (A) must be read literally, and that, so read, it comprehends primary as well as secondary union action insofar as it bears upon employees of a neutral employer, conflicts with the holding of the Court of Appeals for the District of Columbia Circuit in *Denver Building and Construction Trades Council, et al.* v. *National Labor Relations Board*, decided September 1, 1950, not yet officially reported, a conflict noted in the *Denver* opinion. In the *Denver* case the court, finding the legislative history controlling, held that Section 8 (b) (4) (A) must be "construed as condemning as an unfair labor practice a secondary boycott or strike but not primary action even when an object in a limited sense may be construed to be to force or require an employer to cease doing business with another" (slip op., p. 10) [1] "Not every strike which

[1] Since the violation alleged in the *Denver* case involved only Section 8 (b) (4) (A), the court's decision therein is, in terms, limited to that provision. However, the question of whether Section 8 (b) (4) (B) is limited to secondary activity

might be construed to have as an object the forcing of someone to 'cease doing business' with someone else is prohibited. * * * But cf. *contra, International Rice Mills* v. *Labor Board,* June 21, 1950 (5th Cir.)" (slip op., p. 8).

The Board holds that picketing at the premises of an employer with whom a union is engaged in a labor dispute is primary and does not violate Section 8 (b) (4) (A), even though an object of the picketing is to induce employees of neutral employers, who approach the picket line in the course of their employment, not to cross it.[8] On the other

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is governed by the identical considerations which determine this question in respect of Section 8 (b) (4) (A). Accordingly, the District of Columbia Circuit's premise concerning 8 (b) (4) (A) is equally applicable to 8 (b) (4) (B).

[8] *Oil Workers International Union, Local Union 346 (CIO) and The Pure Oil Company,* 84 NLRB 315; *United Electrical, Radio and Machine Workers of America, et al. and Ryan Construction Corporation,* 85 NLRB 417; *International Brotherhood of Teamsters, et al. and Schultz Refrigerated Service, Inc.,* 87 NLRB, No. 82.

Illustrative of Congress' intention to deal only with secondary boycotts in Section 8 (b) (4) (A) is the statement of Senator Taft (93 Cong. Rec. 4198) that:

> This provision [Section 8 (b) (4) (A)] makes it unlawful to resort to a *secondary boycott* to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees . . . under the provisions of the Norris-LaGuardia Act, it became impossible to stop a secondary boycott or any other kind of a strike, no matter how unlawful it may have been at common law. All this provision of the bill does is to reverse the effect of the law as to *secondary* boycotts. (Emphasis added.)

He added that "secondary boycotts" are to be distinguished from "strikes for higher wages and hours and better working conditions, which are entirely proper and which throughout this bill are recognized as completely proper strikes" (93 Cong. Rec. 3834). Similarly, in referring to Section 8 (b) (4) (B), the Committee reports specifically note: "It is to be observed that the primary strike for recognition (without a Board certification) was not prohibited." H. Conf. Rep.

hand, the Board holds that where picketing or other forms of inducement to cease work occur at the premises of a neutral employer, the union's conduct is secondary and therefore violative of Section 8 (b) (4) (A).[6] Where picketing occurs at a project where two or more employers, only one of whom is involved in a labor dispute, are at work, the Board holds that the picketing is secondary if the evidence shows that the picketing is designed to induce employees of one of the neutral employers to cease work for the purpose of disrupting business relations between the neutral employer and the employer who is engaged in the dispute.[7]

The *Denver* case agrees with the Board, not with the Fifth Circuit in the instant case, as to the existence of the primary-secondary distinction,

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No. 510, 80th Cong., 1st Sess., p. 43; S. Rep. No. 105, 80th Cong., 1st Sess., p. 22.

As the Court in the *Denver* case pointed out (slip op., p. 8), the fact that Congress did not intend, by Section 8 (b) (4) (A), to reach primary activity is further emphasized by Section 13 of the Act, which preserves the right to strike except as specifically provided otherwise.

[6] *United Brotherhood of Carpenters, et al. and Wadsworth Building Company, et al.*, 81 NLRB 802, 10 (l) injunction sustained, 170 F. 2d 863 (C.A. 10) enforced 26 LRRM 2480 (C. A. 10, August 14, 1950); *Printing Specialties and Paper Converters Union, Local 388, A.F.L. and Sealright Pacific, Ltd.*, 82 NLRB 271, 10 (l) injunction sustained, 171 F. 2d 331 (C.A. 9), certiorari dismissed, 336 U.S. 949. Cf. *Douds v. Metropolitan Federation of Architects*, 75 F. Supp. 672 (S.D. N.Y.).

[7] *Denver Building and Construction Trades Council, et al. and Gould and Preisner*, 82 NLRB 1195, enforcement denied, September 1, 1950 (C. A. D. C.); *International Brotherhood of Electrical Workers, et al. and Samuel Langer*, 82 NLRB 1028, enforced, 181 F. 2d 34 (C. A. 2); *Local 74, United Brotherhood of Carpenters and Joiners, et al. and Watson's Specialty Store*, 80 NLRB 533, enforced, 181 F. 2d 126 (C.A. 6).

but disagrees with the Board, as well as with the Second and Sixth Circuit cases cited immediately below, as to whether the particular conduct involved was to be regarded as primary or secondary. The *Denver* opinion thus enlarged the scope of the exemption for primary strikes and picketing recognized by the Board. It held, reversing the Board, that where picketing occurs at premises where an employer with whom the union is engaged in a dispute is at work the picketing must be regarded as primary and hence not in violation of Section 8(b) (4) (A), although employees of another employer are at work on the same project and the picketing is shown to have been designed to induce those employees to cease work for their employer, with an object of disrupting business relations between the employers.

In *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34 (C. A. 2), certiorari pending, No. 108, this Term, and *National Labor Relations Board* v. *Local 74, United Brotherhood of Carpenters and Joiners of America*, 181 F. 2d 126 (C. A. 6), certiorari pending, No. 85, this Term, the Courts of Appeals for the Second and Sixth Circuits, while sustaining the Board's view that picketing under these circumstances is secondary, and hence in violation of Section 8 (b) (4) (A), likewise assumed the validity of the Board's fundamental construction of Section 8 (b) (4) (B), which excludes primary picketing from the ban of that Section.

These cases are in conflict with the decision of the Court of Appeals for the District of Columbia Circuit only with respect to application of the primary-secondary distinction to common-project cases. The decision below, which rejects the Board's distinction between primary and secondary activities, *in toto*, accords to Section 8 (b) (4) (A) a broader scope than does the Board and the other courts of appeals which have had occasion to consider the question.

Because of the conflict between the views of the court below and the Court of Appeals for the District of Columbia Circuit as to the *validity* of the primary-secondary distinction, and the conflict between the Courts of Appeals for the Second and Sixth Circuits and the Court of Appeals for the District of Columbia Circuit as to *application* of the primary-secondary distinction, the Government believes that this Court should resolve both questions. In addition to the instant petition, we are therefore also filing a petition for a writ of certiorari in the *Denver* case, and withdrawing our oppositions to certiorari in the *Electrical Workers* and *Carpenters* cases, insofar as those petitions seek review of the question of application of the primary-secondary distinction to picketing at a project where two employers, only one of whom is involved in a labor dispute, are at work.

2. The question whether Sections 8 (b) (4) (A)

and (B) outlaw primary union activity is of major importance in the administration of the National Labor Relations Act. Between August 22, 1947, and June 30, 1950, a total of 960 charges have been filed with the Board alleging violations of these provisions. These charges accounted for well over 90 percent of the total volume under all of the subsections of Section 8 (b) (4).

During this period and since, the General Counsel of the Board, in deciding whether Section 10 (*l*) required him to petition the District Court for temporary injunctive relief in respect of 8 (b) (4) (A) and (B) charges, as well as in deciding whether to issue a complaint based thereon, has followed the practice of dismissing such charges where only primary union activity appeared to be involved. Moreover, the Board, in those cases which have reached it for decision, has uniformly given effect to the primary-secondary distinction. The court below, by rejecting the principle that Sections 8 (b) (4) (A) and (B) are limited to secondary union activity, has thus upset a policy which both the General Counsel and the Board have applied in a significant number of cases.

The Board believes that the distinction between primary and secondary activities is necessary to give effect to the policy which Congress sought to embody in Section 8 (b) (4) (A)—outlawing secondary boycotts while preserving the right to engage in primary strikes and picketing, and

dealing with abuses of that right in other provisions of the statute, like Section 8 (b) (1) (A). It is important to the Board as well as to labor organizations, employers and the public generally to know whether the Board's construction of the statute in this respect is correct.

CONCLUSION

The question raised by the decision below conflicts in fundamental principle with that of another Court of Appeals. This question is of substantial public importance. It is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

DAVID P. FINDLING,
Associate General Counsel,
National Labor Relations Board.

SEPTEMBER, 1950.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, 151, *et seq.*), are as follows:

* * * * * *

UNFAIR LABOR PRACTICES

Sec. 8. (a) * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for em-

ployees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) * * *

* * * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the

meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That

for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 313

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION TO PETITION FOR REHEARING

The gist of the argument for rehearing is that, since the refusal of even a single employee to cross a picket line is a "concerted" activity for "mutual aid or protection," safeguarded by Section 7, a union's inducement of such a refusal must necessarily be considered an invitation to engage in "a *concerted* refusal" to work within the meaning of Section 8 (b) (4). The parallel which petitioner postulates does not exist.

The Board agrees that the refusal of a single employee to cross a primary picket line is a *concerted* activity for mutual aid or protection, *Cyril*

de Cordova & Bro., 91 NLRB, No. 187, 26 LRRM 1628. In such a situation, concert exists between the worker who honors the picket line and the picketing worker who invites his aid by establishing the line. As between the picketer who invites such support and the worker who grants it by withholding his labor, "common cause" has been made, "and the solidarity so established is 'mutual aid' in the most literal sense, as nobody doubts." Judge Learned Hand in *National Labor Relations Board* v. *Peter Cailler Kohler Swiss Chocolates Co., Inc.*, 130 F. 2d 503, 505-506 (C.A. 2). This "concert," which exists between the picket and those who refuse to cross the line, suffices to bring the conduct of both picket and employee within the language of Section 7. And since this concerted action is directed against the primary employer to the labor dispute who is being picketed rather than against the neutral employer whose employee approaches the picket line, it is "no more than was traditional and permissible in a primary strike." *National Labor Relations Board* v. *Denver Building Trades Council*, No. 393, this Term; see also, *Di Giorgio Fruit Corp.* v. *National Labor Relations Board* (App. D.C., No. 10605), decided June 21, 1951, slip op. p. 9.

The petition for rehearing overlooks the fact that the existence of "concert" in this sense is, however, irrelevant for the purpose of determining whether there has been a "concerted refusal" to work within the meaning of Section 8 (b) (4). To come within that Section there must be an inducement to "concerted action *by the customer's employees to force the customer to boycott the mill.*"

(*Denver* case, *supra*; italics added). Concert between the worker who pickets and the worker who respects the picket line is not "concert by the customer's employees." To meet this test there must be action in concert among the employees of the neutral employer, *i.e.*, those who approach the picket line. Normally, a picket does not ask the workers who approach a picket line to act in concert *vis-a-vis* each other. As this Court observed in the instant case, "A union's inducements or encouragements reaching individual employees of neutral employers only as they happen to approach the picketed place of business generally are not aimed at concerted, as distinguished from individual, conduct *by such employees.*" (Italics added). There is, therefore, no inconsistency between finding, on the one hand, that "such employees" alone did not engage in a "concerted refusal" to work within the meaning of Section 8 (b)(4), but that, on the other hand, "such employees" together with the picketing workers, did engage in "concerted activities" within the meaning of Section 7.

Petitioner's argument thus tends to confirm rather than to impair the validity of the result reached by the Court in this case. For, since the refusal by workers to cross a primary picket line is activity which the statute specifically protects, it is hardly possible that Congress intended to condemn the inducement to engage in such a protected activity as a secondary boycott.

Accordingly, it is respectfully submitted that the petition for rehearing should be denied.

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
MOZART G. RATNER,
Assistant General Counsel,
BERNARD DUNAU,
Attorney,
National Labor Relations Board.

JUNE, 1951.

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In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 313

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 89-96) is reported at 183 F. 2d 21. The findings of fact, conclusions of law, and order of the Board (R. 53-55, 56-85) are reported at 84 NLRB 360.

JURISDICTION

The judgment of the court below was entered on June 21, 1950. The petition for a writ of certiorari was filed on September 18, 1950, and was granted on December 11, 1950. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Section 8 (b) (4) (A) of the National Labor Relations Act makes it an unfair labor practice

for a labor organization to strike or to induce or encourage employees to strike or to engage in a concerted refusal to perform services for their employer, where an object thereof is to force the employer to cease doing business with any other person. Section 8 (b) (4) (B) of the Act makes similar conduct an unfair labor practice, where an object thereof is to require another employer to recognize or bargain with a labor organization which has not been certified under the provisions of Section 9 of the Act. The question presented is whether a labor organization, by picketing and allied means of inducement conducted at the employer's premises, in support of its demand to be recognized by that employer as bargaining agent, violates Section 8 (b) (4) (A), because its conduct induces employees of a neutral employer not to cross the picket line in the course of their employment; and whether, by its conduct, the labor organization, not having been certified as exclusive representative, also violates Section 8 (b) (4) (B) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp III, 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 83-87.

STATEMENT

Upon charges filed by six Louisiana rice mills (R. 57; 10, 14, 17, 18),[1] the Acting Regional Director of the Board issued a complaint (R. 22-26) against the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A.F.L., hereafter called the "Union." In part, the complaint alleged that about September 5, 1947, the Union "called a strike of the employees" of Kaplan Rice Mills, Inc., "and placed and thereafter maintained a picket line around" its plant, "an object thereof being to force or require" Kaplan "to recognize or bargain" with the Union as the representative of its employees (R. 25).[2] It further alleged that,

[1] The charging parties, also the petitioners in the court below, consisted of the International Rice Milling Company, Inc., American Rice Milling Company, Inc., Louisiana State Rice Milling Company, Inc., Supreme Rice Mill, Loving Rice Mills, and Kaplan Rice Mills, Inc.

[2] The complaint also alleged that, in violation of Section 8 (b) (4) (A) and (B) of the Act, the Union, in the course of an organizational strike among the employees of the six rice mills, picketed the railroad servicing the mills and threatened the employees of those railroads with violence for dishonoring its picket lines, in an effort to force the railroads to cease transporting the goods of the rice mills (R. 25-26). The Board held that railroad employees are not "employees of any employer" within the meaning of Section 8 (b) (4) (A) and (B) whom unions are forbidden to induce to withhold services (R. 54-55). The court below reversed the Board's determination of this issue and remanded the case to the Board for further proceedings in conformity with the court's view that inducement of railroad employees is prohibited (R. 91-94, 96-97). The Board has not sought review of the holding of the court below on this point.

about October 21, 1947, the Union, "by . . . violence . . . and pickets, induced and encouraged the employees of The Sales House to engage in a concerted refusal in the course of their employment to transport or otherwise handle . . . commodities to or from the plant of Kaplan . . .," the object being "(1) to force or require . . . The Sales House . . . : to cease doing business with . . . Kaplan, and (2) to force or require . . . Kaplan . . . to recognize or bargain collectively" with the Union as the representative of its employees (R. 25-26). In its answer, the Union alleged, among other things, that it was engaged in "lawful primary strikes and picketing for organizational and recognition purposes, as authorized by the Act as amended" (R. 32). A hearing was held before a trial examiner of the Board, who on June 25, 1948, issued his intermediate report (R. 56-85). On June 20, 1949, the Board issued its decision and order dismissing the complaint (R. 53-56). The pertinent facts, as found by the Board, may be summarized as follows:

I. *The Board's Findings of Fact*

The Union began an organizational campaign among the employees of the six rice mills in November 1946 (R. 62), and in February 1947, the Union by letter requested each of the mills to recognize it as the collective bargaining representative of their employees (R. 62). In ensuing negotiations the mills requested the Union to es-

tablish proof of its majority claim (R. 62-63). The Kaplan Mill agreed to accept a card check as a means of establishing the Teamsters' majority status but the Union took no further steps to that end (R. 63). The Union failed to show that it represented a majority of the employees in any mill (R. 77-78 and n. 25); the mills did not recognize the Union as the collective bargaining representative (R. 63); and no proceedings were instituted before the Board to certify the Union as the statutory representative of the employees of the mills (R. 63).[3]

On September 3, 1947, pursuant to authorization previously given by its membership at a regular meeting, the Union instituted a strike to obtain recognition, which, by September 17, extended to all of the mills except Kaplan (R. 63).[4] Picket lines, patrolled by between one and four strikers, were established at all of the struck mills (R. 64). The pickets carried placards, each bearing one of the following legends and the name of the mill (R. 64):

> This is a picket line. Respect it. Do not cross it.

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[3] No other union has been chosen by the employees to represent them, nor has the employer recognized any other bargaining agent.

[4] Less than a majority of the production and maintenance employees participated in the strike at each mill (R. 64). All the mills continued to operate throughout the strike at near, if not full, capacity and without any serious inconvenience (R. 64, 78).

This job is unfair to Local 201, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L.

This job unfair tc organized labor.

High cost low pay blues.

About October 15, 1947, in the vicinity of the Kaplan mill, the Union placed a picket line on the passing tracks of the railroad serving Kaplan, although no strike had formally been called at Kaplan and none of the Kaplan employees was on strike (R. 65-67 and n. 10). About October 22 the Union began to picket the Kaplan mill proper (R. 67, n. 10). The pickets carried various signs, one being "This job unfair" to the Union (R. 67, n. 10).

On October 21, 1947, a truck of The Sales and Service House, driven by two employees of that firm, appeared at the Kaplan mill to obtain some rice or bran for Sales House (R. 69). The Sales and Service House is engaged in the business of selling feed and grain, and it purchases and handles goods, articles and commodities from the Kaplan Rice Mills (R. 61). As the Sales House truck was about to enter the Kaplan mill, pickets of the Union, stationed near the railroad tracks in the immediate vicinity of the mill, asked the drivers to stop (R. 69, Bd. Exh. 13, Tr. 173). The pickets, who formed a line across the road leading to the mill, told the truck drivers that "you can't go" into the mill because "we got a strike on" (R. 69).

The Sales House drivers agreed "to go back," and they returned to the highway where they stopped and were met by a representative of the Kaplan mill (R. 69). Together with the Kaplan mill representative, the drivers returned to the mill by another route. As they crossed the railroad tracks in the immediate vicinity of the mill and proceeded to enter, rocks were thrown at the trucks by the Union pickets (R. 69-70, Bd. Exh. 13, Tr. 173). The drivers nevertheless proceeded on to the mill (R. 70).

II. *The Board's Conclusions and Order*

On the basis of the foregoing facts, the Board concluded that the Union's conduct toward the Sales House employees did not violate Section 8 (b) (4) (A) and (B) of the Act, and accordingly it entered an order dismissing the complaint in this respect (R. 54-55). In reaching this conclusion, the Board stated that (R. 55):

> The [Union's] activities arose out of the *primary* picketing of the Kaplan mill, and were carried out in the immediate vicinity of that mill. Violence on the picket line is not to be condoned, but violence does not convert *primary* picketing into *secondary* action within the meaning of Section 8 (b) (4) (A) or (B).[8]

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[8] In addition to stating that it did not condone the violence on the picket line, the Board said (R. 55):

> As the complaint herein does *not* allege restraint and coercion of employees in violation of Section 8

In explanation of its conclusions, the Board cited its earlier decision in *Pure Oil Company*, 84 NLRB 315 (R. 55, n. 2). In that case, in support of its strike against Standard Oil Company, "the Union posted pickets *at Standard Oil premises*, including the refinery and the entrances to the dock. The Union also sent letters to . . . [another union] stating in effect that the Standard Oil dock was 'hot'." (84 NLRB, at 317-318). Rejecting a contention that this action "was unlawful because it . . . induced the employees of Pure Oil [another employer] to engage in a concerted refusal to handle Pure Oil products at the dock, in order to force Pure Oil to cease doing business with Standard Oil," the Board explained that (84 NLRB, at 318-320):

> A strike, by its very nature, inconveniences those who customarily do business with the struck employer. Moreover, any accompanying picketing of the employer's premises is necessarily designed to induce and encourage third persons to cease doing business with the picketed employer. It does not follow, however, that such picketing is

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(b) (1) (A), we are not called upon to decide whether the Respondent's conduct toward the employees of the Sales House constituted a violation of that Section.

In other cases the Board has held that violence accompanying primary picketing is violative of Section 8 (b) (1) (A), *International Longshoremen's and Warehousemen's Union, CIO, et al.*, 79 NLRB 1487, 1504-1507; *United Furpiture Workers of America, et al.*, 81 NLRB 886. See also, *infra*, pp. 39-42, 63-66.

therefore proscribed by Section 8 (b) (4) (A) of the Act.

. . . Section 8 (b) (4) (A) was aimed at *secondary* and not primary action.

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. . . the section does not outlaw any of the primary means which unions traditionally use to press their demands on employers. In this case the Union was making certain lawful demands on Standard Oil. It was pressing these demands, in part, by picketing the Standard Oil dock. As that picketing was confined to the immediate vicinity of Standard Oil premises we find that it constituted permissive primary action.

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. . . The Union's letters were appeals to refuse to perform services only *at the Standard Oil dock*. . . . Like the picketing of the dock, therefore, the Union's letters must be viewed as an integral part of its lawful right to take primary action in support of its demands on Standard Oil, and to publicize this action. The appeals contained in the letters, no less than the appeals inherent in the picketing of the dock and in the signs which were posted adjacent to the picket line, thus amounted to nothing more than a request to respect a primary picket line *at the Employer's premises*. This is traditional primary strike action. . . .

. . . The fact that the Union's primary pressure on Standard Oil may have also had a

secondary effect, namely inducing and encouraging employees of other employers to cease doing business on Standard Oil premises, does not, in our opinion, convert lawful primary action into lawful secondary action within the meaning of Section 8 (b) (4) (A). To hold otherwise might well outlaw virtually every effective strike, for a consequence of all strikes is some interference with business relationships between the struck employer and others.

III. *The Decision Below*

On August 4, 1949, the six rice mills filed in the court below a petition to review the Board's order dismissing the complaint (R. 1-6). On June 21, 1950, the court below issued its opinion (R. 89-96), and on the same day entered its judgment (R. 96-97), in which it set aside the Board's order dismissing the complaint and remanded the cause to the Board for further proceedings in conformity with the court's opinion.

The court below held that the Union's conduct in inducing the Sales House employees to refuse to perform services for their employer at the Kaplan mill constituted an unfair labor practice within the meaning of Section 8 (b) (4) (A) and (B) of the Act. The court stated (R. 95):

> The statute clearly provides a remedy for the type of conduct engaged in by the union, without resort to any distinction between primary and secondary activities. If the

> union's activities come within the language of the statute, they constitute an unfair labor practice, regardless of whether they might have been considered a true "secondary boycott" under the old common law or under any of the modern popular theories.

The court added (R. 96):

> The fact that [the Union's] activities occurred near the struck plant is not enough to draw such a distinction as the Board attempts to draw, especially where there is violence. * * * To allow the Board to rule such activity as prohibited by the statute not to be a violation thereof, simply because it occurred in the vicinity of the struck employer's plant, would render the section ineffective and insufficient.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that Section 8 (b) (4) (A) and (B) of the Act does not distinguish between primary labor action, which it permits, and secondary labor action, which it prohibits.

2. In holding that inducement of employees of a neutral employer by picketing and allied inducement conducted at the situs of the primary employer's place of business does not constitute primary labor action outside the purview of Section 8 (b) (4) (A) and (B).

3. In seemingly holding that violence as such is pertinent to a determination whether Section 8 (b) (4) (A) and (B) of the Act has been violated.

4. In setting aside the Board's order insofar as it dismissed that portion of the complaint which alleged that the Union's inducement of the Sales House employees not to enter the primary employer's premises constituted unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act.

SUMMARY OF ARGUMENT

A. The language of Section 8 (b) (4) (A) cannot properly be construed apart from other provisions of the Act. The literal interpretation adopted by the court has the effect of outlawing traditional primary labor pressures which the Act as a whole shows Congress intended to permit. Section 8 (b) (4) (A) reflects the fact that "Congress, in the search for a compromise between the conflicting interests of employees in collective bargaining and that of neutrals in avoiding involvements in quarrels not their own, decided to draw a line at secondary boycotts . . . ." Chief Judge Learned Hand, in *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34, 40 (C. A. 2), certiorari granted, No. 108, this Term.

The purpose of Section 8 (b) (4) (A), as its legislative history shows, is to make it "unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees." Senator Taft in 93 Cong. Rec. 4198, 2 Leg. Hist. 1106. As conceived by the proponents

of Section 8 (b) (4) (A), the gist of secondary activity is not the exertion of labor pressure, *i.e.*, strikes and picketing, at the original source of the dispute, but only extension of such pressures to other enterprises outside the primary center of controversy.

While it prohibited secondary pressure, Congress did not interfere with the exertion of primary labor pressure. Such pressure, designed to curtail the primary employer's business, Congress avowedly desired to permit and protect. As explained by Senator Taft, "secondary boycotts" are to be distinguished from "strikes for higher wages and hours and better working conditions, which are entirely proper." 93 Cong. Rec. 3834, 3835, in 2 Leg. Hist. 1005-07. The legislative history, as well as other provisions of the Act, also show that Congress deliberately refused to outlaw the primary organizational strike.

In preserving the primary strike, Congress also preserved the right to induce others to support the strike, for "Little indeed would be left of the right to strike . . . if the striking employees were denied the concomitant right of peacefully picketing the immediate business of their employer." *Schultz Refrigerated Service, Inc.*, 87 NLRB 502, 504-505.

The only limitation Congress placed on primary picketing and allied means of inducement, as such, is the requirement of Section 8 (b) (1) (A) of the Act which, in prohibiting restraint and coercion

of employees by unions, prevents the use of "physical force, or threats of force, or of economic reprisal," in the conduct of "strikes and other organizational activities." *Perry Norvell Co.*, 80 NLRB 225, 239. Such abusive conduct aside, nothing in the Act is designed to "prevent anyone using the strike in a legitimate way, conducting peaceful picketing, or employing persuasion." Senator Taft in 93 Cong. Rec. 4436, in 2 Leg. Hist. 1207.

B. Read *in vacuo*, without regard to the other provisions of the Act and to the legislative history which show that Congress did not intend to outlaw primary strike pressure, 8 (b) (4) (A) and (B) would prohibit primary labor action no less than secondary labor action. On the face of it, to forbid "a labor organization or its agents . . . to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to . . . work . . . where an object thereof is . . . forcing or requiring . . . any employer or other person . . . to cease doing business with any other person," is to forbid all primary strikes, all primary picketing, and all related forms of inducement. Every primary strike has as "an object thereof" to cause the employer to "cease doing business" with another person and thereby to induce the employer to yield to a demand in order to avoid resulting economic loss through the disruption of his business relations. So too, and with the same end in view, all primary picketing and related induce-

ment, by urging the workers of a neutral employer not to enter the premises of the struck employer, has as "an object thereof" to "induce or encourage the employees of any employer to engage in . . . a concerted refusal in the course of their employment to . . . work."

But the provision must be read in conjunction with other provisions of the law which affirmatively recognize and protect the right to strike. To give literalism full sway "would destroy the Act by driving it to absurdity." Rifkind, J., in *Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp. 672, 675 (S. D. N. Y.). It is evident therefore that the language of Section 8 (b) (4) (A) and (B) "must be read with the implicit condition" that the labor action it proscribes is recourse to "secondary, but not primary means." *Schultz Refrigerated Service, Inc.*, 87 NLRB 502, 504.

C. Preservation of a genuine opportunity for recourse to primary labor action, which Section 8 (b) (4) (A) and (B) does not affect, requires at its minimum that a primary strike or primary picketing and allied inducement conducted *at the premises* of the primary employer not be deemed a secondary boycott. To effectuate the policy of Congress, a union must be able to influence employees of a neutral employer who approach the primary employer's premises not to enter his premises, without thereby giving the picketing a secondary character. The ensuing interruption of the neutral employer's business is a consequence

against which 8 (b) (4) (A) and (B) may not be thought to guard, for the "reluctance of workers to cross a picket line is notorious" (*Printing Specialties and Paper Converters Union* v. *LeBaron*, 171 F. 2d 331, 334 (C. A. 9), and by permitting primary picketing, Congress must have intended to sanction the interference with the neutral's business which flows from this source. Congress guarded the neutral employer against an extension of the picket line to his premises; it did not shield him against the usual interruption occasioned by the approach of his employees to a primary picket line at another employer's establishment. A contrary holding would outlaw all primary picketing.

The Board's view that Section 8 (b) (4) (A) and (B) does not stigmatize as a "secondary boycott" picketing at the premises of an employer immediately involved in a labor dispute is supported by the general understanding of courts, legislatures and experts in labor relations that picketing and allied inducement at the premises of the primary employer does not become "secondary" merely because its consequences or object may be to dissuade third persons from doing business with the primary employer.

D. If the inducement is otherwise primary, it is immaterial that it is accompanied by violence, for the *means* of inducement have no relevance to Section 8 (b) (4) (A) and (B). In prohibiting secondary action, just as in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 513, the statute "draws no

distinction between the restraints effected by violence and those achieved by peaceful but oftentimes quite as effective means. Restraints not within the Act, when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence."

E. The proviso contained at the end of Section 8 (b) (4) does not invalidate the distinction between primary and secondary labor action. In the first place, invocation of the proviso does not eliminate the need for a distinction between primary and secondary action. If the only test of a lawful strike is whether it is called by a majority union, even a secondary strike, so long as it is called by a majority union, is proper. The only way to avoid this patently unsound result is to imply a distinction between primary and secondary action. Secondly, to make the legality of the strike depend upon its sponsorship by a majority union transforms Section 8 (b) (4) (A) and (B) from a sanction directed at secondary action into a sanction directed at minority action, and thereby achieves results at odds with the avowed purpose of Congress. Thirdly, respondent's view transforms the proviso from an exculpatory provision into an element of the offense, a result clearly not intended by the draftsmen.

ARGUMENT

PICKETING OF AN EMPLOYER AT THE SITUS OF A LABOR DISPUTE IN WHICH HE IS INVOLVED DOES NOT VIOLATE SECTION 8 (b) (4) (A) OR (B) OF THE ACT, ALTHOUGH EMPLOYEES OF NEUTRAL EMPLOYERS ARE INDUCED THEREBY NOT TO ENTER THE PRIMARY EMPLOYER'S PLACE OF BUSINESS

Section 8 (b) (4) (A) and (B) of the National Labor Relations Act provides that it shall be an unfair labor practice for a labor organization or its agents—

> (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring * * * any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9.

Read literally, and in isolation from interrelated provisions of the statute, and without regard for the objectives which the legislative history shows

that Congress in these provisions intended to achieve, the quoted language appears to ban all strikes and picketing. For to forbid "a labor organization or its agents . . . to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to . . . work . . . where an object thereof is . . . forcing or requiring . . . any employer or other person . . . to cease doing business with any other person," is to forbid all primary strikes, all primary picketing, and all related forms of inducement. Every primary strike has "*an* object thereof" to cause the employer to "cease doing business" with another person and thereby to induce the employer to yield to a demand in order to avoid resulting economic loss through the disruption of his business relations.[6] So too, and with the same end in view, all primary picketing and related inducement, by urging the workers of a neutral employer not to enter the premises of the struck employer, has as "an object thereof" to "induce or encourage the employ-

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[6] In this respect, there is no distinction between a primary strike and a secondary strike, for each ordinarily has a two-fold objective. Each has the *tactical* objective of causing a cessation of business in furtherance of the *ultimate* objective of gaining accession to a demand. The difference is that, with respect to a primary strike, the struck employer is in a position to grant the demand, whereas with respect to a secondary strike, the struck employer is not in a position to grant the demand, but is instead being used as the medium by which to influence another employer's accession.

ees of any employer to engage in . . . a concerted refusal in the course of their employment to . . . work." As it has been pointedly stated, "Certainly it is *an* object of very many strikes and picket lines to induce a reduction in the struck employer's business by an appeal to customers—'any person'—to cease doing business with the employer;'" [7] indeed, the words have sufficient latitude to "reach out to and include" the effect of a strike in causing an interruption of "the business relation between an employee of the primary employer . . . and the primary employer. . . ." Rifkind, J., in *Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp. 672, 675 (S. D. N. Y.).

Nevertheless, considering only what it deemed the "plain wording of the statute" (R. 95), the Court of Appeals in the present case held the Union's conduct to be violative of Section 8 (b) (4) (A) and (B). "Comparing the union's activities with the plain wording of the statute" (R. 95) the court below held, in effect, that the Union acted unlawfully in that it induced the employees of Sales House to refuse in the course of their employment to transport or handle the goods of Kaplan, an object being both (a) to require Sales

[7] The anomaly of this literal reading as it pertains to customers is apparent. Inducement of customers to cease doing business is not forbidden because 8 (b) (4) (A) forbids only inducement of "*employees* of any employer" (*infra*, p. 29 n. 20); yet a strike which has that as an objective, as many strikes do, would be forbidden.

House to cease handling the products of Kaplan or doing business with it, and (b) to require Kaplan to recognize the Union, not certified by the Board as the exclusive representative, as the bargaining representative of its employees.

Such a construction of Section 8 (b) (4) (A) and (B) does violence to other provisions of the statute and frustrates the manifest purposes of Congress. For this reason, not only the Board, but also every court, with the single exception of the court below, which has had occasion to pass on the question, has rejected this construction.[7a] As this Court has expressly held, in the amended Act as in the original Act, "Congress safeguarded the exercise by employees of 'concerted activities' and expressly recognized the right to strike." *United Automobile Workers* v. *O'Brien*, 339 U.S. 454, 456, 457. Section 7, which protects the right to engage in concerted activities, and Section 13, which safeguards the right to strike, are explicit as to this; and other sections of the statute equally leave no doubt that Congress intended to protect and preserve the right to strike and picket, at least against an employer with whom a labor organization is involved in an economic or representation dispute.

[7a] *Denver Building & Construction Trades Council* v. *National Labor Relations Board*, —— F. 2d —— (C.A.D.C.); *United Brotherhood of Carpenters and Joiners* v. *Sperry*, 170 F. 2d 863, 868 (C.A. 10); *Printing Specialties & Paper Converters Union* v. *Le Baron*, 171 F. 2d. 331, 333-334 (C.A. 9). *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34 (C.A. 2).

Thus, Section 2 (3) preserves to strikers their status as employees.[8] Section 8 (d) lays down conditions which must be met by labor organizations before they may properly engage in strikes over contract modification and termination. Special handling is provided for strikes which may create a national emergency (Sections 206-210). Moreover, to aid in avoiding strikes a conciliation service was established to assist the parties in composing differences (Sections 201-205 of the Act). Section 8 (b) (4) (A) and (B) aside, a strike is unqualifiedly banned only if an object is to compel an employer to bargain with one union where another has been certified by the Board as exclusive representative (Section 8 (b) (4) (C)), or if an object is to compel an assignment of particular work in the absence of a Board determination of the class entitled to perform it (Section 8 (b) (4) (D)). Finally, Section 8 (b) (1) (A) prohibits labor organizations from using tactics of restraint or coercion of employees to induce them to support strikes.

Manifestly, these sections would be meaningless if Section 8 (b) (4) (A) and (B) made all strikes and associated inducement of employees unlawful. If the construction given Section 8 (b) (4) (A) and (B) by the court below is correct, all of the provisions discussed above become not only anom-

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[8] *National Labor Relations Board* v. *Mackay Radio and Tel. Co.*, 304 U. S. 333, 347.

alous but absurd. A purpose to enact provisions having such inconsistent consequences is not to be attributed to Congress.

We think it apparent, therefore, that the proper interpretation of Section 8 (b) (4) (A) and (B) is not to be obtained by reading its words as though they existed in a vacuum. The statute must be read as a unified whole,[9] and in the light of the "mischief to be corrected and the end to be attained." [10] It becomes not only appropriate but indispensable, in construing the language of Section 8 (b) (4) (A) and (B), to look to its purpose and to the milieu in which it is to operate,[11] and to "interpret its word in the light of its legislative history and of the particular evils at which the legislation was aimed." [12]

So read, as we shall show, Section 8 (b) (4) (A) and (B) reflects the fact that "Congress, in the search for a compromise between the conflicting interests of employees in collective bargaining and

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[9] "There is need to keep in view . . . the structure of the statute, and the relation, physical and logical, between its several parts." *Duparquet Co.* v. *Evans*, 297 U. S. 216, 218.

[10] *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 124.

[11] "Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used . . ." Judge Learned Hand in *National Labor Relations Board* v. *Federbush Co.*, 121 F. 2d 954, 957 (C. A. 2).

[12] *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 489.

that of neutrals in avoiding involvements in quarrels not their own, decided to draw the line at secondary boycotts . . ." L. Hand, C. J., in *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34, 40 (C. A. 2), certiorari granted, No. 108, this Term. Implicit in the section, therefore, is the necessity of distinguishing, as the Board has done, between primary strikes and picketing which Section 8 (b) (4) (A) does not affect, and secondary strikes and picketing which Section 8 (b) (4) (A) and (B) outlaws.

The court below, however, disdained "attempts to draw a fine distinction between primary and secondary action" (R. 94); it regarded as irrelevant the fact, deemed crucial by the Board, that the picketing and related acts of violence stemmed from a labor dispute between the Union and Kaplan, and, so far as here relevant, was restricted to the immediate vicinity of the Kaplan mill. No picketing took place at the premises of Sales House, the neutral employer; Sales House was not drawn into the dispute except as a consequence of its employees' attempt to enter the premises of Kaplan.

The court adopted the view that to regard the Union's activity as outside the reach of 8 (b) (4) (A) and (B) "simply because it occurred in the vicinity of the struck employer's plant, would render the section ineffective and insufficient" (R. 96), "especially where there is violence" (R. 96).

This view obliterates the very line between primary strikes and picketing and secondary strikes and picketing which Congress drew. By obliterating this line the court below has transformed the character of Section 8 (b) (4) (A) and (B), from a compromise between conflicting interests, into a total subordination of one interest to the other.

We shall show that (1) to confine the area of industrial combat to the disputants involved in a labor controversy, Congress forbade a labor organization to utilize secondary pressures, but at the same time, it continued to permit and protect the use of primary pressures; (2) the literal language of Section 8 (b) (4) (A) and (B), though conceivably applicable to both primary and secondary pressures, must be construed together with other related provisions of the Act and in the light of the legislative background and purposes, so as to effectuate the distinction which Congress envisioned between the two types of pressures; [13] (3) in working out a harmonious interplay between primary and secondary labor action, which is essentially a task for "the empiric process of administration," [14] the Board properly determined that the exertion of pressure upon a primary em-

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[13] *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 124.

[14] *Phelps-Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194.

ployer through picketing and allied devices for enlisting the support of third parties, is primary and not secondary when the picketing is conducted in geographical proximity to the primary employer's place of business; and (4) action which is in all other respects primary does not become secondary because violence attends it, for the test is not whether the means of inducement are coercive (coercive means are outlawed by Section 8 (b) (1) (A)), but whether the pressure exerted is primary or secondary. We shall also show, contrary to the contention of the respondent which the court below evidently did not accept, that the Union's minority status is also immaterial in determining whether its conduct falls within the ban of secondary action.

A. THE STATUTORY SCHEME ENVISIONS A DISTINCTION BETWEEN PRIMARY AND SECONDARY LABOR ACTION

1. *The legislative history shows that Section 8 (b) (4) (A) and (B) was designed to eliminate union practices familiar to Congress as "secondary boycotts." The Section was not designed to curb primary strike pressure.*

In his major speech introducing the Senate version of the bill which became the Act, Senator Taft thus summarized the effect of Section 8 (b) (4) (A) of the Act: "It is made an unfair labor practice for any union to engage in a secondary

boycott."[15] Throughout the congressional deliberation upon 8 (b) (4) (A) its purpose was repeatedly described as the elimination of the "secondary boycott" from the arsenal of permissible union weapons.[16] In explanation of the aim of Congress, the Senate Report stated (S. Rep. No. 105, 80th Cong., 1st Sess., 22, in 1 Leg. Hist. 428):

> Under paragraph (A) strikes or boycotts, or attempts to induce or encourage such action, are made violations of the act if the purpose is to force an employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of another, or to cease doing business with any other person. Thus, it would not be lawful for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B; nor would it be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with em-

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[15] 93 Cong. Rec. 3838, in 2 Leg. Hist. 1012. "Leg. Hist." refers to the two volume edition entitled *Legislative History of the Labor Management Relations Act, 1947* (Gov't. Print. Off., 1948).

[16] S. Rep. No. 105, 80th Cong., 1st Sess., 7, 8, 22, 54, in 1 Leg. Hist. 413, 414, 428, 460; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 43, in 1 Leg. Hist. 547; 93 Cong. Rec. 4131, 4138, 4837-38, 4858, 4859, 4865, 5005, 5011, 5014, 6445-46, 7537, A. 2252, in 2 Leg. Hist. 1055, 1068, 1354-55, 1364, 1365, 1370-71, 1372-73, 1383, 1479, 1491, 1497, 1544, 1654, 1524.

> ployer B (with whom the union has a dispute).

The Senate Report exemplified the forbidden practice by a concrete illustration (*Ibid.*):

> [It is] an unfair labor practice for a union to engage in the type of secondary boycott that has been conducted in New York City by Local No. 3 of the IBEW, whereby electricians have refused to install electrical products of manufacturers employing electricians who are members of some labor organization other than Local No. 3. (See testimony of R. S. Edwards, vol. 1, p. 176, *et seq.*[17]; *Allen Bradley Co.* v. *Local Union No. 3, I.B.E.W.*, 325 U.S. 797.)

This union attitude, which forbade the use of material at the point of installation because of the character of its manufacture elsewhere, was sum-

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[17] ". . . The boycott we are objecting to operates like this: The A. F. of L. International Brotherhood of Electrical Workers controls the labor that installs electrical construction materials of all kinds. This IBEW refuses to install and brings pressure on contractors and wholesalers to prevent them from handling any of these electrical construction materials unless they have been manufactured by IBEW labor *in the original plants.*" (Emphasis supplied.) 1 *Hearings before the Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22*, 80th Cong., 1st Sess. 176-177. As explained by the Second Circuit during its consideration of the case, the labor weapon involved was "refusal to work upon disfavored goods." *Allen Bradley Co.* v. *Local Union No. 3*, 145 F. 2d 215, 219 (C. A. 2), reversed, 325 U. S. 797. This type of "product boycott" is clearly secondary labor action. *Wadsworth Building Co.*, 81 NLRB 802, 805-806, enforced, 184 F. 2d 60 (C. A. 10), pending on petition for certiorari, No. 387, this Term.

marized by Senator Taft to be: "We will not permit any material made by any other union or by any nonunion workers to come into New York City and be put into any building in New York City." [18] Each of the other illustrations of secondary activity cited by Senator Taft likewise pertained to creating a dispute at another plant or point of business because the product there utilized was deemed objectionable by virtue of conditions which prevailed at the original place of its manufacture.[19] Therefore, as conceived by the proponents of Section 8 (b) (4) (A), the gist of secondary activity is not the exertion of labor pressure at the original source of the dispute, but only the extension or proliferation of the dispute to an area beyond the primary center of controversy.

Thus, the purpose of 8 (b) (4) (A) is to confine the area of industrial conflict to the employer with whom the Union is engaged in a labor dispute and to prevent labor organizations from treating neutral employers, merely because they do business with the primary employer, as though they were parties to the dispute. To this end a labor organization is forbidden to direct its pressures against a neutral employer by depriving him of the services *of his own employees.*[20] Insulation of the

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[18] 93 Cong. Rec. 4199, in 2 Leg. Hist. 1107.

[19] 93 Cong. Rec. 3838, 4199, in 2 Leg. Hist. 1012, 1107-1108.

[20] It is only pressure exerted on the neutral employer through his *employees* which is prohibited. A union is not forbidden to solicit the cooperation of the neutral employer by

neutral employer is effected by prohibiting a union from engaging in a strike or other concerted withholding of labor among employees of the neutral employer, or correlatively, from inducing or encouraging the employees of the neutral employer to take such action, where an object of the activity is to require the neutral employer to discontinue its normal business relations with the primary employer. The evil to which Congress was addressing itself in Section 8 (b) (4) (A) is depicted in the statements of Senator Taft (93 Cong. Rec. 4198, 4199, in 2 Leg. Hist. 1106, 1107, 1108):

> . . . This provision makes it unlawful to resort to a *secondary* boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees. * * * under the provisions of the Norris-LaGuardia Act, it became impossible to stop a *secondary*

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approaching him directly. *Schatte* v. *International Alliance*, 182 F. 2d 158, 165 (C. A. 9), certiorari denied, 340 U. S. 827; *Conway's Express*, 87 NLRB 972, 980-983; *Santa Ana Lumber Co.*, 87 NLRB 937, 941-942; *Arkansas Express, Inc.*, 92 NLRB, No. 64, 27 LRRM 1077; *Humphrey* v. *International Brotherhood of Teamsters*, 25 LRRM 2318, 2321 (N.D.N.Y., January 11, 1950). So too, a union may induce the customers of any employer to refrain from patronizing him. *Consolidated Frame Co.*, 91 NLRB, No. 197, 27 LRRM 1008; 1011; *Hoover Co.*, 90 NLRB, No. 201, 26 LRRM 1365, 1367-1368. Thus, as distinct from secondary pressure exerted through the medium of employees, unions are free under Section 8 (b) (4) (A) to appeal to employers, consumers, and other elements of the public at large to support its position.

boycott or any other kind of a strike, no matter how unlawful it may have been at common law. All this provision of the bill does is to reverse the effect of the law as to *secondary* boycotts. It has been set forth that there are good *secondary* boycotts and bad *secondary* boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of *secondary* boycotts. So we have so broadened the provision dealing with *secondary* boycotts as to make them an unfair labor practice. [Italics supplied.]

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Take a case in which the employer is getting along perfectly with his employees. They agree on wages. Wages and working conditions are satisfactory on both sides. Someone else says to those employees, "We want you to strike against your employer because he happens to be handling some product which we do not like. We do not think it is made under proper conditions." Of course if that sort of thing is encouraged there will be hundreds and thousands of strikes in the United States. There is no reason that I can see why we should make it lawful for persons to incite workers to strike when they are perfectly satisfied with their conditions. If their conditions are not satisfactory, then it is perfectly lawful to encourage them to strike. The Senator [Pepper] says they must be encouraged to

> strike because their employer happens to be doing business with someone the union does not like or with whom it is having trouble or having a strike. On that basis there can be a chain reaction that will tie up the entire United States in a series of sympathetic strikes, if we choose to call them that.
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> [We condemn the view] that if other workers do not like the way some employer is treating his employees, they can promote strikes in any other plant which happens to be handling the product of the plant whose management the workers do not like.

In short, Congress was of the view that "labor disputes should be confined to the business immediately involved and that unions should be prohibited from extending them to other employers by inducing and encouraging the latter's employees to exert economic pressure in support of their disputes." *Wadsworth Building Co., Inc.*, 81 NLRB 802, 812, enforced, 184 F. 2d 60 (C. A. 10), pending on petition for writ of certiorari, No. 387, this Term. It therefore "prohibited peaceful picketing, persuasion, and encouragement, as well as non-peaceful economic action, in aid of the forbidden objective." (*Id.*) See also *National Labor Relations Board* v. *Wine, Liquor & Distillery Workers Union*, 178 F. 2d 584 (C. A. 2), enforcing 78 NLRB 504; *IBEW* v. *National Labor Relations Board*, 181 F. 2d 34 (C. A. 2), enforcing

82 NLRB 1028, certiorari granted, No. 108, this Term; *National Labor Relations Board* v. *Local 74*, 181 F. 2d 126 (C. A. 6), enforcing 80 NLRB 533, certiorari granted, No. 85, this Term; *Sterling Beverages, Inc.*, 90 NLRB, No. 75, 26 LRRM 1213.

Section 8 (b) (4) (B) of the Act is identical in scheme with Section 8 (b) (4) (A). It forbids a labor organization to force a primary employer, by pressure directed against the neutral employer through his employees, to recognize an *uncertified* union as the bargaining representative of the employees of the primary employer. In essence, 8 (b) (4) (B) is a qualification of 8 (b) (4) (A). On the one hand, it broadens the prohibitions of 8 (b) (4) (A) if the pressure against the neutral employer is aimed at forcing the recognition of an uncertified union; that is, in furtherance of this object, it not only forbids conscripting the neutral employer's aid by causing him to cease doing business with the primary employer, a result already achieved by 8 (b) (4) (A), but it also forbids conscripting the neutral employer to exert other influence on the primary employer, such as social or family pressure, or business pressure not covered by 8 (b) (4) (A).[21] On the other hand, if the

[21] Examples of business pressure perhaps not covered by 8 (b) (4) (A) may be, (1) to induce a neutral employer to refrain from reporting favorably on the credit standing of a primary employer; (2) to induce a neutral employer to exert his influence to keep a primary employer out of a trade asso-

pressure against the neutral employer is aimed at forcing the recognition of a *certified* union, 8 (b) (4) (B) lifts the prohibitions of 8 (b) (4) (A) and permits the conscription of the neutral employer's aid in requiring the primary employer to honor the exclusive status of the certified union.[22] Section 8 (b) (4) (B), therefore, merely refines the regulation of secondary labor action proscribed by Section 8 (b) (4) (A).[23]

2. *The legislative history shows that Congress did not intend to impair the right of labor organizations to exert primary strike pressure in labor disputes.*

The legislative history shows not only that Congress conceived of Section 8 (b) (4) (A) as prohibiting only secondary and not primary strike pressure, but also that it intended to continue to accord statutory protection to the exercise of primary pressure, of which the primary strike and

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ciation; or (3) to induce a neutral employer to refrain from becoming an accommodation endorser on a promissory note on behalf of a primary employer.

[22] See *DiGiorgio Fruit Corp.*, 87 NLRB 720, 748-749. See also, S. Rep. No. 105, 80th Cong., 1st Sess., 22, in 1 Leg. Hist. 428 ("... strikes and boycotts for recognition are not made illegal if the union has been certified as the exclusive representative."); H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 43, in 1 Leg. Hist. 547 ("... strikes and boycotts for recognition were not prohibited if the union had been certified as the exclusive representative.")

[23] Compare the relationship of the succeeding subsections with Section 8 (1) of the Wagner Act, as described in S. Rep. No. 573, 74th Cong., 1st Sess., p. 9.

primary picketing designed to induce third parties to support it are the main components. In the very statement in which he disapproved of the secondary boycott (*supra* pp. 30-31), Senator Taft stressed that if the employment "conditions" of the employees of the primary employer "are not satisfactory, then it is perfectly lawful to encourage them to strike." Senator Taft had earlier elaborated on this thought in placing before the Senate a bill of which he was the chief sponsor. The bill, he explained, was designed to remedy the situation of the past, as he conceived it, in which the law did not discriminate between "strikes for justifiable purposes and strikes for wholly illegal and improper purposes," such as "strikes in the nature of secondary boycotts" (93 Cong. Rec. 3834, in 2 Leg. Hist. 1005-06). He stressed, however, that "secondary boycotts" are to be distinguished from "strikes for higher wages and hours and better working conditions, which are entirely proper and which throughout this bill are recognized as completely proper strikes" (*Ibid.*). He added (93 Cong. Rec. 3835, in 2 Leg. Hist. 1007):

> Basically, I believe that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon that proposition. That means that we recognize freedom to strike when the question involved is the improvement of wages, hours, and

> working conditions, when a contract has expired and neither side is bound by a contract.
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> . . . So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation.

It is thus plain that Congress considered the conventional primary strike to attain economic ends, as distinguished from the secondary boycott, to be permitted and protected labor action.

The primary organizational strike, no less than the primary strike for "the improvement of wages, hours, and working conditions," was also preserved intact. Adverting to Section 8 (b) (4) (B), the Senate Report stated (S. Rep. No. 105, 80th Cong., 1st Sess., 22, in 1 Leg. Hist. 428):

> It is to be observed that the *primary* strike for recognition (without a Board certification) is not proscribed. [Italics supplied.]

In practically identical terms, the House Conference Report stated (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 43, in 1 Leg. Hist. 547):

> It is to be observed that the *primary* strike for recognition (without a Board certification) was not prohibited. [Italics supplied.]

The House bill and an early version of the Senate bill had forbidden any strike for recognition, un-

less the union had been certified by the Board, but this broader prohibition was narrowed to permit a primary recognition strike, except where another union was certified as the representative (*infra*, pp. 71-75). Thus, the distinction between primary and secondary action is inherent in the statutory scheme of Section 8 (b) (4) (B), as well as of Section 8 (b) (4) (A); primary pressure in support of an organizational claim is permitted,[24] and secondary pressure may be brought to bear in support of a claim for recognition by a certified union (*supra*, pp. 33-34).[25]

As has been shown, except upon the assumption that Section 8 (b) (4) (A) and (B) does not prohibit any strike action other than that of a secondary nature, the Act's protection and restriction of strike activity in other respects is meaningless. Yet, as Senator Taft reiterated in summing up the bill which became the Act upon its return from

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[24] *Howland Dry Goods Co.*, 83 NLRB 1037, 1041. As stated by Senator Taft: It is only "an *indirect* organizational strike" which is forbidden in the absence of a certified representative. 93 Cong. Rec. 3838, in 2 Leg. Hist. 1012. (Emphasis supplied.)

[25] "The thinking underlying 8 (b) (4) (B) seems to be that Congress considered it indefensible for a union with the democratic election machinery of the Act available to it to resort to secondary pressure to force recognition, but at the same time considered entirely justifiable the utilization of such an economic weapon against an employer who himself refused to abide by the results of the Board's processes, regardless of the injurious effect it might have on the business of a neutral." *Moore Dry Dock Co.*, 92 NLRB, No. 93.

conference (93 Cong. Rec. 6445-6446, in 2 Leg. Hist. 1544):

> The conferees rejected the broad prohibition of all kinds of strikes.[26] * * * The only strikes which are declared to be illegal are secondary boycotts and jurisdictional strikes.

It cannot be assumed that Congress intended to subordinate its preservation of the right to exert primary strike pressure to its correlative objective of eliminating secondary pressure. For Congress was aware that existence of the right to strike was indispensable to the entire system of collective bargaining, and it was for this reason that, in the amended Act, as in the original Act, "Congress safeguarded the exercise by employees of 'concerted activities' and expressly recognized the right to strike." *United Automobile Workers* v. *O'Brien*, 339 U. S. 454, 456, 457.

3. ***Together with the right to engage in primary strikes, Congress preserved the right to induce third parties to support such strikes by withholding their patronage or services from the primary employer at his place of business.***

Inducement of others to support a strike is the related counterpart of a lawful cessation of work,

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[26] This remark evidently had reference to the House bill which contained severe and broadly-stated curtailments of strikes, but which even in that form did not purport to ban all strikes. H. R. 3020, 80th Cong., 1st Sess., Secs. 12, 2 (13) to (16), in 1 Leg. Hist. 204-207, 168-170. See also, H. Rep. No. 245, 80th Cong., 1st Sess., 23-24, 43-44, in 1 Leg. Hist., 314-315, 334-335.

for "Little indeed would be left of the right to strike . . . if the striking employees were denied the concomitant right of peacefully picketing the immediate business of their employer." *Schultz Refrigerated Service, Inc.*, 87 NLRB 502, 504-505.[27] But it is not necessary to rely merely upon inference from the nature of a strike to support the conclusion that Congress preserved the right to induce third parties to support primary strikes. The Congressional deliberations pertaining to Section 8 (b) (1) (A) of the Act affirmatively disclose that, no less than the primary strike itself, the inducement of others to support it, which is the goal of primary picketing and related conduct, was also left unimpaired.

Read in conjunction with Section 7 of the Act, Section 8 (b) (1) (A) makes it an unfair labor practice for a labor organization "to restrain or coerce employees in the exercise of the right" to *refrain* from union activity. "By Section 8 (b) (1) (A), Congress sought to fix the rules of the game, to insure that strikes and other organizational activities of employees were conducted peaceably by persuasion and propaganda and not by physical force, or threats of force, or of eco-

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[27] "The importance of picketing in industrial struggles is reflected by the statement of a labor leader in a study of the recent strikes in the southern textile industry that the 'real contest of the strike takes place on the picket line'." Hellerstein, *Picketing Legislation and the Courts*, 10 Nor. Car. L. Rev. 158, 160 (1932).

nomic reprisal." *Perry Norvell Co.*, 80 NLRB 225, 239.[28] In its initial form, Section 8 (b) (1) (A) also contained the words "interfere with," but those words were expunged by unanimous consent in order to allay fear that the section, in derogation of "union organizational activities," would "be construed to mean that any conversation, any persuasion, any urging upon the part of any person, in an effort to persuade another to join a labor organization, would constitute an unfair labor practice."[29] Even as so restricted, it was charged that the section "would slow up the organizational activity of unions" and would "have the effect of outlawing organizational strikes and strikes for recognition."[30] In answer to that imputation, Senator Taft explained that (93 Cong. Rec. 4436, in 2 Leg. Hist. 1206, 1207):

> The effect of the pending amendment is that the Board may call the union before them, exactly as it has called the employer, and say, "Here are the rules of the game. You must cease and desist from coercing and restraining the employees who want to work from going to work and earning the

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[28] See also, *National Maritime Union*, 78 NLRB 971, 982-987, enforced, 175 F. 2d 686 (C. A. 2), certiorari denied, 338 U. S. 954.

[29] 93 Cong. Rec. 4270, 4271, in 2 Leg. Hist. 1138-39. See also, 93 Cong. Rec. 4020-21, 4435, in 2 Leg. Hist. 1023-25, 1205. ". . . Congress does not forbid representatives, by reasonable means, to persuade employees to join the unions." H. Rep. No. 245, 80th Cong., 1st Sess., 30, in 1 Leg. Hist. 321.

[30] 93 Cong. Rec. 4430, 4431, in 2 Leg. Hist. 1195, 1197.

money which they are entitled to earn." The Board may say, "*You can persuade them; you can put up signs; you can conduct any form of propaganda you want to in order to persuade them,* but you cannot, by threat of force or threat of economic reprisal, prevent them from exercising their right to work." . . . [Emphasis supplied.]

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[Section 8 (b) (1) (A)] will slow up organizational drives only if they are accompanied by threats and coercion. . . . *It will not be directed against the use of propaganda or the use of persuasion, or against the use of any of the other peaceful methods of organizing employees.*

. . . *It would not outlaw anybody striking who wanted to strike. It would not prevent anyone using the strike in a legitimate way, conducting peaceful picketing, or employing persuasion.* [Emphasis supplied.]

Summarizing the import of Section 8 (b) (1) (A) in a later analysis, Senator Taft explained that its prohibitions only "apply to *coercive acts* of unions against employees who did not wish to join or did not care to participate in a strike or a picket line."[31] And the House version of the bill, which contained explicit regulation of picketing activ-

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[31] 93 Cong. Rec. 6859, in 2 Leg. Hist. 1623. (Emphasis supplied.) While the analysis was submitted to the Senate after it had passed the conference bill, it preceded the Senate's action overruling the President's veto and making the amendments law.

ity,[32] permitted "picketing in numbers or in ways . . . reasonably necessary to give notice of the existence of a labor dispute at the place being picketed."[33]

Thus, except insofar as the activity is subject to Section 8 (b) (1) (A), Congress desired to preserve from diminution "the traditional means of conveying to fellow workers and the public at large the fact that a labor dispute exists" with the primary employer, at least where the media employed are "the primary means which unions traditionally use to press their demands on employers." *Pure Oil Co.*, 84 NLRB 315, 318.

There is, therefore, no room for doubt that "Congress, in the search for a compromise between the conflicting interests of employees in collective bargaining and that of neutrals in avoiding involvements in quarrels not their own, decided to draw a line at secondary boycotts. . . ." Chief Judge Learned Hand, in *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34, 40 (C. A. 2), certiorari granted, No. 108, this Term. That line contemplates that, while secondary pressures are prohibited, unions may continue to employ traditional primary pressures in support of economic and organizational ends.

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[32] H. R. 3020, 80th Cong., 1st Sess., Sec. 12 (a) (1), in 1 Leg. Hist. 78, 204.

[33] H. Rep. No. 245, 80th Cong., 1st Sess., 44, in 1 Leg. Hist. 335.

B. Section 8 (b) (4) (A) and (B) must be read with the implicit condition that it prohibits secondary, but not primary, labor action

Congress' purpose in distinguishing between secondary boycotts and primary labor action, a distinction which, as we have shown, is clearly reflected in the statutory scheme, is the touchstone for the interpretation of Section 8 (b) (4) (A) and (B). That underlying theme is complemented by Section 13 of the Act which provides that:

> Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

To be meaningful, this congressional guide to interpretation (*United Automobile Workers* v. *Wis. Board*, 336 U. S. 245, 259), requires that, in determining the "limitations or qualifications" imposed by prohibition of secondary labor action, "nothing . . . shall be construed . . . to interfere with or impede or diminish in any way the right to strike" against the primary employer involved in the dispute. See *Denver Building and Construction Trades Council* v. *National Labor Relations Board*, ——F. 2d —— (C. A. D. C.), certiorari granted, No. 393, this Term; Rifkind, J., in *Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp. 672, 675 (S. D. N. Y.). Section 8 (b) (4) (A) and

(B), therefore, must be read to bring about a harmonious interplay between the protection of primary labor action and the prohibition of secondary labor action, if the congressional objective is to be fulfilled.

If the court below is right in its construction, it would follow, as we have shown, *supra*, pp. 18-20, 22-25, that the primary strike, its normal concomitant, primary picketing, and related forms of inducement of others to support the primary strike, are banned. That such a construction "would destroy the Act by driving it to absurdity" (Rifkind, J., *ibid.*) demonstrates again that "There is no surer way to misread any document than to read it literally."[34]

"Since it is clear the 'cease doing business' clause [of Section 8 (b) (4) (A)], when read with the clause preserving the right to strike except as specifically provided, is not to be literally construed, its bounds must be sought. The history of the clause before, during and since enactment, in Congress, before the Board and in the courts, places primary labor action outside those bounds." *Denver Building and Construction Trades Coun-*

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[34] L. Hand, J., in *Guiseppi* v. *Walling*, 144 F. 2d 608, 624 (C. A. 2). See also, *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U. S. 755; *Markham* v. *Cabell*, 326 U. S. 404, 409; *United States* v. *Dickerson*, 310 U. S. 554, 561-562; *United States* v. *American Trucking Ass'ns.*, 310 U. S. 534, 542, 544; *United States* v. *United Mine Workers*, 330 U. S. 258, 309.

cil v. *National Labor Relations Board*, —— F. 2d ——, (C. A. D. C.), certiorari granted, No. 393, this Term. Accordingly, the Board properly holds that the language of Section 8 (b) (4) (A) and (B) "must be read with the implicit condition" that the labor action it proscribes is recourse to "secondary, but not primary means." *Schultz Refrigerated Service, Inc.*, 87 NLRB, 502, 504.[35] The words are thereby given a meaning "according to the sense of the thing. . . ."[36]

C. PICKETING AND ALLIED INDUCEMENT CONDUCTED AT THE PREMISES OF THE PRIMARY EMPLOYER IS NOT WITHIN THE BAN OF SECTION 8 (b) (4) (A) AND (B).

Recognition that Section 8 (b) (4) (A) and (B) reaches only secondary labor action requires deter-

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[35] See also, *Pure Oil Co.*, 84 NLRB 315; *Ryan Construction Corp.*, 85 NLRB 417; *Grauman Co.*, 87 NLRB 755; *Interborough News Co.*, 90 NLRB, No. 297, 26 LRRM 1440.

[36] *Addison* v. *Holly Hill Co.*, 322 U. S. 607, 618. In *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, a remarkably similar reconciliation between realism and literalism was effected, for though all labor combination and its purpose have some restrictive influence on price competition, the Court did not sweep the activity uncritically into the ban of the Sherman Anti-Trust Act. The Court explained, 310 U. S., at 513: "If, without such effects on the market, we were to hold that a local factory strike, stopping production and shipment of its product interstate, violates the Sherman law, practically every strike in modern industry would be brought within the jurisdiction of the federal courts, under the Sherman Act, to remedy local law violations." See also the concurring opinion of Mr. Justice Stone in *United States* v. *Hutcheson*, 312 U. S. 219, 237-243.

mination whether the conduct in question in this case is of a primary or secondary character. The preservation of a genuine opportunity for recourse to primary labor action requires at its minimum the inviolability of a primary strike or primary picketing and allied inducement conducted *at the premises* of the primary employer.[37] The reach of Section 8 (b) (4) (A) and (B), in consonance with the congressional intent *not* "to curb primary picketing," has been explained by the Board to be that (*Ryan Construction Co.*, 85 NLRB 417, 418):[38]

> It was intended only to outlaw certain *secondary* boycotts, whereby unions sought to enlarge the economic battleground beyond the premises of the primary employer. When picketing is wholly at the premises of the employer with whom the union is engaged in a labor dispute, it cannot be called "secondary" even though, as is virtually always the case, an object of the picketing is to dissuade all persons from entering such premises for business reasons.

In this case, the inducement directed by the Union pickets to the employees of Sales House to refrain from entering the Kaplan mill occurred

[37] For a discussion of the distinction between primary and secondary activity, in other circumstances, see the Board's brief in *National Labor Relations Board* v. *Denver Building and Construction Trades Council*, No. 393, this Term, pp. 23-38.

[38] In the *Ryan* case, as illustrative of its statement in that case, the Board cited its earlier decision in the instant case (85 NLRB, at 418, n. 2).

at Kaplan's premises. Those premises were the situs of the primary organizational dispute between the Union and Kaplan. No picketing took place at Sales House. As the neutral employer, Sales House was not drawn into the dispute; its employees were affected only when they attempted to enter Kaplan's premises. And since, as we shall see (*infra*, pp. 63-66), violence attending the inducement is immaterial to the question whether strike activity is primary or secondary, the inducement at Kaplan's premises must be viewed in the same light as if it flowed from the mere existence of a picket line, the wording of a placard on the picket's back, slogans chanted by the pickets, leaflets distributed by the pickets, explicit oral requests of the pickets, or a combination of these.[39] Therefore, the nub of the issue presented by the Board's holding that such inducement is primary in character is whether, by picketing and allied inducement conducted at the premises of the primary employer, a union may influence employees of a neutral employer who approach the pri-

[39] It is of no moment that none of Kaplan's employees were on strike (*supra*, p. 6), for "Picketing without a strike is no more unlawful than a strike without picketing." *Exchange Bakery* v. *Rifkin*, 245 N. Y. 260, 263, 157 N. E. 130, 132. "Picketing for organizational purposes or to call attention to unfair conditions—where all other attributes of primary action are present—has never been considered to attain a secondary character, simply because no strike, strikebreakers, or replacements are to be found on the picketed premises." *Moore Dry Dock Co.*, 92 NLRB, No. 93. See also, *infra*, pp. 68-78.

mary employer's place of business, not to enter his premises.[40] Stated otherwise, is a labor organization forbidden to engage in conventional union efforts to secure observance of a primary picket line by all workers?

The only basis for doubting that such inducement is primary in character is that, if it succeeds in influencing employees of the neutral employer not to enter the premises of the primary employer, it will cause an interruption in the neutral employer's business. But, if any scope is to be left for the permissive exertion of primary pressure, the prohibition of secondary pressure cannot go so far as to insulate the neutral employer completely from all the repercussions of a labor dispute. The interdependence of economic interest of those who do business with each other[41] is such that primary pressure directed against one enterprise, if successful, unavoidably has a disruptive effect on the other. Since the "reluctance of workers to cross a picket line is notorious" (*Printing Specialties and Paper Converters Union* v. *Le-*

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[40] This case does not present the related question whether, as the Board holds, so long as the inducement invites action *only* at the premises of the primary employer, it is immaterial where the inducement takes place. *Pure Oil Co.*, 84 NLRB 315, 319; *Interborough News Co.*, 90 NLRB, No. 297, 26 LRRM 1440; *DiGiorgio Fruit Corp.*, 87 NLRB 720.

[41] "The interdependence of economic interest of all engaged in the same industry has become a commonplace." *AFL* v. *Swing*, 312 U. S. 321, 326.

Baron, 171 F. 2d 331, 334 (C. A. 9)),[42] Congress, by permitting primary picketing, must have recognized that its insulation of neutral employers could not be absolute. Indeed, complete insulation of the neutral employer is incompatible with a workable concept of neutrality, for the neutral employer can never attain an absolute condition of neutrality which would entitle him to absolute protection; if the neutral ceases to do business with the primary employer he aids the union, and if he continues to do business with the primary employer he aids the latter, so that any action the neutral takes aligns him in some measure with one or the other of the primary disputants.

At the least, in the conventional case, the compromise which Congress effected allows for union efforts to curtail the primary employer's business by picketing at the premises of the primary employer to induce the employees of any neutral who approaches the premises not to enter therein. By primary picketing and allied appeals, the union may induce employees of neutral employers to refrain from assisting the primary employer by rendering services to him at his place of business. When confined to stoppage of business at the primary employer's premises, the thrust of the pres-

[42] "It is almost a rule of trade-union ethics for one labor union to respect a picket line established by another." *L. A. Young Spring & Wire Corp.*, 70 NLRB 868, 874, enforcement denied on other grounds, 163 F. 2d 905 (C. A. D. C.). See also, *Packard Motor Car Co.*, 61 NLRB 4, 16, *affirmed*, 330 U. S. 485.

sure is clearly against the primary employer, and is an integral part of the primary strike. The effect upon the neutral employer's business of the withholding of labor by his employees at the primary employer's premises in these circumstances is entirely incidental to the primary picketing, and is therefore not to be regarded as an attempt to exert secondary pressure upon the neutral employer. But the union may not induce work stoppages at a neutral employer's premises. It may not call a strike at the premises of one who supplies or delivers goods to, or purchases goods from the primary employer; for the thrust of such strike action is against the neutral employer and is not a mere incident of primary strike pressure. By this distinction the business of the neutral employer is protected from an incursive foray outside the area of the primary dispute, while, at the same time, the exertion of pressure at the primary employer's premises is unimpaired.

Analysis of the fundamental elements of labor action emphasizes the propriety of permitting a union engaged in a labor dispute to cause a cessation of business through influencing employees of a neutral employer not to enter the primary employer's premises by picketing and allied inducement at those premises. Economic pressure on the primary employer, to cause accession to a union's demands, "may be exerted at three points: first, at the employer's labor market; second, at his

supply market, and third, at his sales market."[43] Each of these markets may be reached at the primary employer's premises; and it is to affect all of them that pickets are "stationed at the place of business involved in the dispute" in order that they may "by word of mouth, or signs or placards, seek to dissuade workers and others from entering the plant for purposes of business or from otherwise doing business with the employer. Their mere presence at the plant may be sufficient notice to persons interested that the plant is involved in a labor dispute."[44]

Thus, to suppose that inducement of employees of a neutral employer at the primary employer's premises was forbidden is to assume that primary labor action was limited to effecting a curtailment of the primary employer's labor market, but not his supply and sales market.[45] But primary labor action has never been restricted to an attempt to deprive the primary employer of the services of his own workers or prospective employees; it embraces as well attempts to cut off the inflow and outgo of materials *at the primary employer's premises.* The only basis for doubting that primary action encompasses all of this is that a consequence of stopping the inflow and outgo of materials is

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[43] Restatement, Torts, Ch. 38, Topic 3, pp. 138-139 (1939).

[44] *Id.*, Sec. 779, Comment f.

[45] Actually, respondent's argument is premised on an assumption that the labor market, no less than the supply and sales market, may not be curtailed (*supra*, p. 20).

to interrupt, *pro tanto,* the business of the neutral employer. But the sales and purchases of a neutral employer are affected as much by the inability of the primary employer to produce because of lack of workers as by the inability of the primary employer to secure supplies or make shipments at his premises. Injury to the neutral employer results, not from secondary pressure, but from doing business in an interdependent economic world. In safeguarding the interests of the neutral employer and at the same time protecting recourse to primary labor action, Congress could not have intended—in the absence of any explicit indication to that effect—such a drastic inroad into the effectiveness of primary activity as inheres in limiting union pressure to an appeal solely to the workers employed at the primary employer's plant.

Furthermore, to hold that inducement directed at the primary employer's labor market is permitted, but that inducement directed at the primary employer's supply and sales market is prohibited, requires the drawing of an unrealistic distinction between intended and incidental inducement of the employees of a neutral employer. Picket line activity may be conducted in order to induce the primary employer's workers and prospective employees not to work. Such inducement, which must be permitted if any semblance of primary pressure is to be retained, will have a natural tendency to dissuade employees of neutrals from entering the primary employer's premises. *Supra,*

p. 48). Because this result, incidental to permitted inducement, must be countenanced, the only remaining line which can be drawn is to say that incidental inducement of the employees of a neutral is allowed but that intentional inducement is banned.

Such a line creates more mischief than it avoids. According to this formulation, the inducement which flows from the mere existence of a picket line is permitted, but as soon as a picket tells the employee of a neutral that to cross the picket line is to "scab," that is prohibited. Suppose, instead of such an oral statement, the same statement is printed on a picket's placard for all the world to see. Is the ensuing inducement of employees of other employers who approach the picket line incidental or intended? Must the printed statement be qualified by the addition of the words "except employees of other employers"? Must the placard be removed when employees of other employers approach the line? What is the picket's obligation when workers employed at the plant and employees of other employers approach simultaneously? Such queries can be multiplied by the infinite variety of situations which picket line activity presents. The nice differentiations implicit in the distinction between incidental and intended inducement, foreign to the rigor of picket line activity,[46] demonstrate the artificiality of segment-

[46] Compare Frankfurter and Greene, *The Labor Injunction* (1930), p. 35: Picket controversies "make a heavy demand

ing picket line activity in this fashion. The need for such unrealistic dissection stems only from the equally unrealistic assumption that primary pressure can be divided into permissive curtailment of the labor market, on the one hand, and forbidden abridgment of the sales and supply market, on the other. Both misconceptions fall with the recognition that primary labor action contemplates undiluted picket line activity to reach all markets so long as the picketing is confined to the situs of the primary dispute.

This result has been reached by two courts of appeals, in addition to the Court of Appeals for the District of Columbia Circuit, see *Denver* case, No. 393, this Term, which, in sustaining the constitutionality of Section 8 (b) (4) (A), read it as not reaching inducement restricted to the situs of the primary employer's premises.[47] The Court of Ap-

upon intellectual detachment and require a sturdy hold upon reality. They call for understanding and imagination rather out of the current of judicial experience. It is the rare judge who sees that 'men become earnest and excited and vigorous at such times . . . . . The fervor of argument is upon them. . . . They forget etiquette and grammar. . . . . Instigated by emotion and impelled by deep conviction men always employ strong words. . . . The nomenclature of the strike is not the language of the parlor' ".

[47] A third Court of Appeals, that for the Second Circuit, in *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 181 F. 2d 34, 37-38, certiorari granted, No. 393, this Term, expressly reserved this situation in interpreting the reach of Section 8 (b) (4) (A). Compare the reliance on this reservation in *Anderson Sons Co.* v. *Teamsters Union*, 26 LRRM 2208, 2214 (Ohio Ct. of App., May 1, 1950).

peals for the Tenth Circuit stated that (*United Brotherhood of Carpenters and Joiners* v. *Sperry*, 170 F. 2d 863, 868):

> . . . The promulgation and circulation of a blacklist and the peaceful picketing of premises in the course of a labor dispute may constitute a phase of the constitutional right of free utterance, *if the blacklist is confined to the name of the employer primarily involved in the controversy and the picketing is confined to the premises of such employer.* [Emphasis supplied.]

The Court of Appeals for the Ninth Circuit stated that (*Printing Specialties and Paper Converters Union* v. *LeBaron*, 171 F. 2d 331, 333-334):

> The debate here is whether peaceful picketing may constitutionally be confined by legislation to the area of the industrial dispute, or, in plainer English, *to the premises of the employer with whom the dispute is in progress.* [Emphasis supplied.]

Furthermore, in view of Senator Taft's reference to stopping "a secondary boycott . . . unlawful . . . at common law" (*supra*, pp. 30-31), it is appropriate to look "to the history of the secondary boycott" in order that Section 8 (b) (4) (A) and (B) may be "read with the aid of the glossary provided by the law of secondary boycott." Rifkind, J., *supra*, 75 F. Supp., at 676. Although the term "secondary boycott" is a "loose and uncertain label,"[48] of "vague signification" without

[48] Hellerstein, *Secondary Boycotts in Labor Disputes*, 47 Yale L. Jour. 341 (1938).

"precise and exclusive denotation," [49] its meaning has sufficiently coalesced to permit the general statement that primary picketing and allied inducement does not fall under the prohibition of secondary action though its consequence or object may be to dissuade third persons from doing business with the primary employer. As two writers put it (Barnard and Graham, *Labor and the Secondary Boycott*, 15 Wash. L. Rev. 137, 141, 144 (1940)):

> . . . it is to be observed that in so far as purely peaceful picketing of R's [primary employer's] place of business by E [employees of primary employer] seeks to persuade customers (C), i.e., third parties (T), not to patronize R and other employees (E) not to work for R, such picketing contains at least the analytical elements of the "secondary boycott" since T has effectively been brought into the picture. *It is, however, recognized that peaceful picketing of R by E has never been designated by the courts as a "secondary boycott"* . . . [Italics supplied.]

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[49] *United Union Brewing Co.* v. *Beck*, 200 Wash. 474, 490, 93 P. 2d 772, 779. See also Frankfurter and Greene, *The Labor Injunction*, 42 (1930). The use of the term is avoided altogether in the Restatement of Torts because it "has such an uncertain meaning and is so frequently applied to such diverse situations . . ." (Vol. 4, p. 152). However, in the interpretation of Section 8 (b) (4) (A) and (B), the use of the distinction between primary and secondary activity is a necessary analytical and descriptive tool, for its meaning is bottomed on the distinction.

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> . . . unquestioned recognition has now been accorded the legality of the peaceful picketing of R by E, albeit an objective is admittedly to influence T . . . [Such cases are those] involving union activity in geographical proximity to the employer's place of business. . . .

As another writer has stated (1 Teller, *Labor Disputes and Collective Bargaining*, 456 (1940)):[50]

> It has never been suggested that pickets engaged in peaceful primary picketing may be said to be engaging in secondary picketing where, without picketing third parties, they seek whether through the distribution of literature or otherwise to enlist the support of such third parties.

The view of the courts is that the capacity of primary picketing and allied inducement to draw third persons into a labor dispute at the premises of the primary employer does not make it secondary in nature. *Ex parte Henry*, 147 Tex. 315, 326,

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[50] See also, Smith, *Coercion of Third Parties in Labor Disputes—The Secondary Boycott*, 1 La. L. Rev. 277, 286 (1939) (". . . if picketing at the manufactory alone [takes place] . . . no one would suppose . . . that the manufacturer would be entitled to relief merely because the picketing at the factory was successful in stopping retail sales elsewhere."). Cf., Frankfurter and Greene, *The Labor Injunction*, 43 (1930) ("The so-called primary boycott, a mere withholding of patronage and refusal to trade, is unimportant, and its legality has rarely been questioned.")

215 S. W. 2d 588, 595;[51] *Schivera* v. *Long Island Lighting Co.*, 296 N. Y. 26, 69 N. E. 2d 233;[52] *Gruet Motor Car Co.* v. *Briner*, 229 S. W. 2d 259 (Mo. App.); *Consolidated Realty Co.* v. *Dyers, Finishers and Bleachers Federation*, 137 N. J. Eq. 413, 415-416, 45 A. 2d 132, 133-134; *Wright* v. *Teamsters Union Local*, 33 Wash. 2d 905, 913, 207 P. 2d 662, 666; *Northwestern Pacific Railroad Co.* v. *Lumber & Sawmill Workers' Union*, 31 Cal. 2d 441, 447-448, 189 P. 2d 277, 281;[53] *Boyd* v. *Dodge*, 234 S. W. 2d 204, 207 (Ark.). As stated in the *Henry case* (147 Tex., at 326, 215 S. W. 2d, at 595):

> . . . it seems to be the position . . . that since the employees of the railways would not cross the picket line manned by [members of the striking union], the picketing *and the consequent refusal of the railway employees to serve the* [primary] *employer's plant* constitute such concerted action between [members of the striking union] and those employees as to amount to secondary picketing and boycotting . . . . picketing does not offend . . . merely because third parties who come to the area of the

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[51] See also *International Brotherhood of Teamsters* v. *Best Motor Lines*, 229 S. W. 2d 912, 918-919 (Tex. Civ. App.); *Alamo Motor Lines, Inc.* v. *International Brotherhood of Teamsters*, 229 S. W. 2d 112 (Tex. Civ. App.).

[52] See also, *Clopay Corp.* v. *Mazer*, 73 N. Y. S. 2d 126 (Sup. Ct. Sp. Term).

[53] See also, *Holt* v. *Superior Court*, 27 LRRM 2129 (Cal. Dist. Ct. of Ap., November 14, 1950).

> dispute may prove sympathetic to one disputant rather than to the other. [Italics added.]

And as stated in the *Boyd case* (234 S. W. 2d, at 207):

> A secondary boycott occurs when striking employees, in addition to picketing the premises of their own employer, also establish picket lines around the premises of others not so directly interested in the labor dispute, such as customers to whom the primary employer sells or manufacturers from whom he buys.

Similarly, in construing the "secondary boycott" prohibition of the Wisconsin Employment Peace Act,[54] the Wisconsin Employment Relations Board has held that, in picketing in front of an apartment building to support an economic demand on behalf of an employee of that building, a union did not engage in secondary activity though the consequence of the picketing was to curtail delivery of material by employees who refused to pass the

[54] Wis. Stat. c. 111 (1949). Section 111.06 (2) (g) of the Wisconsin Employment Peace Act provides that it "shall be an unfair labor practice for an employee individually or in concert with others" to "engage in a secondary boycott," and Section 111.02 (12) defines a "secondary boycott" to "include combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by (a) withholding patronage, labor, or other beneficial business intercourse, (b) picketing, (c) refusing to handle, install, use or work on particular materials, equipment or supplies, or (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another."

picket line to the detriment of tenants who were thereby deprived of services (*Lanson Investment Co.*, 26 LRRM 1147, 1148):

> Ordinarily, striking employees and the union representing them have a right to acquaint the public with the fact of the existence of a strike, the causes thereof, and to appeal for aid from the public by withholding patronage to the struck employer. Ordinarily, these activities are carried on by a union by the establishment of a picket line at the premises of the employer, the pickets carrying signs indicating the nature of the dispute and frequently carrying appeals for aid. One of the results of such picketing automatically anticipated by the union is that members of sister unions will respect a picket line so established and will refuse to enter property so picketed.
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> . . . In this case as in the case of all office buildings or apartment buildings, the only place that can properly be picketed when a dispute arises between the employees of the apartment or office building and the employer, is such building. Such picketing is engaged in concededly for the purpose of bringing economic pressure on the employer to grant the requests of the union. In all such cases, third persons are bound to suffer inconvenience and frequently loss. The picketing however cannot be said to be directed against the third person and in this

case, it is privileged as to the owner of the apartment building.

And federal district courts, in denying preliminary injunctive relief ancillary to the Board's final adjudication of the secondary labor action alleged (Section 10 (l) of the Act), have relied on the distinction between primary and secondary picketing.[55]

Accordingly, the Board properly holds, in applying the primary-secondary dichotomy which Section 8 (b) (4) (A) and (B) prescribes, that picketing and allied inducement conducted at the premises of the primary employer is primary in character. This formulation is confirmed by (1) its promotion of the congressional purpose to protect neutral employers by confining the area of industrial conflict to the situs of the primary dispute, (2) its furtherance of the congressional objective of preserving the potency of primary labor action, and (3) its compatibility with the conventional understanding of a secondary boycott. Ensuing harm to third persons there may nevertheless be, but such "Resulting injury is incidental and must be endured."[56]. Such injury is incidental, not because it is unintended, but because it is ancillary to primary labor action.

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[55] *Douds* v. *Metropolitan Federation of Architects*, 75 F. Supp. 672 (S.D.N.Y.); *Elliott* v. *Amalgamated Meat Cutters and Butcher Workmen*, 91 F. Supp. 690, 697-699 (W. D. Mo.), appeal pending.

[56] *Exchange Bakery & Restaurant* v. *Rifkin*, 245 N. Y. 260, 263, 157 N. E. 130, 133.

In the judicial consideration of such a formulation, which entails fitting particular circumstances into the pattern of a primary-secondary principle, since "the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. . . . [T]he Board's determination . . . is to be accepted if it has 'warrant in the record' and a reasonable basis in law." *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 131. In positing a distinction between primary and secondary activity, Section 8 (b) (4) (A) and (B) makes clear that the "line must be drawn somewhere" (*Sterling Beverages, Inc.*, 90 NLRB, No. 75, 26 LRRM 1213, 1215), and "when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the [Board] must be accepted unless we can say that it is very wide of any reasonable mark." *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 611, quoting Mr. Justice Holmes in *Louisville Gas Co.* v. *Coleman*, 277 U. S. 32, 41. Moreover, the use of this standard of review in this type of case is particularly apt, for the traditional difficulty in formulating a clear distinction between primary and secondary activity suggests the unique need for administrative handling by an agency which can bring to the task the advantages of "uniformity,"

"technical expertness," "continuous attention and a clearly allocated responsibility." Final Report, Attorney General's Committee on Administrative Procedure, S. Doc. No. 8, 77th Cong., 1st Sess., 14, 16.

D. VIOLENCE ATTENDING THE INDUCEMENT IS IMMATERIAL TO THE QUESTION WHETHER PICKET LINE ACTIVITY IS PRIMARY OR SECONDARY

In this case, the inducement by the Union pickets at the premises of Kaplan was accompanied by violence, in the form of rocks thrown at the employees of Sales House, in order to dissuade the employees from entering Kaplan's premises (*supra*, p. 7). The Board held that "Violence on the picket line is not to be condoned, but violence does not convert *primary* picketing into *secondary* action within the meaning of Section 8 (b) (4) (A) or (B)" (R. 55). The court below, however, parenthetically justified its refusal to sustain the Board's distinction between primary and secondary activity, by regarding it as insufficient "especially where there is violence" (R. 96).

The Board properly holds that if the inducement is otherwise primary, it is immaterial that it entails an exertion of violence, for the *means* of inducement have no relevance to Section 8 (b) (4) (A) and (B) where the question in issue is whether an *object* of the inducement is to instigate primary or secondary pressure. "It was the *objective* of the union's secondary activities, . . . and

not the *quality of the means* employed to accomplish that objective, which was the dominant factor motivating Congress in enacting that provision." *Wadsworth Building Co., Inc.*, 81 NLRB 802, 812, enforced, 184 F. 2d 60 (C. A. 10). As this Court has held, "By § 8 (b) (4), strikes to attain named objectives are made unfair labor practices," but by that provision "it is the objectives only and not the tactics of a strike which bring it within the power of the Federal Board." *United Automobile Workers* v. *Wisconsin Board*, 336 U. S. 245, 262-263.

Means are important in determining whether, in violation of Section 8 (b) (1) (A) of the Act, a union is restraining and coercing employees in the exercise of the right to refrain from self-organization. (*Supra*, pp. 39-42).) With respect to Section 8 (b) (1) (A), unlike Section 8 (b) (4) (A) and (B), "Congress was aiming at means, not at ends." *Perry Norvell Co.*, 80 NLRB 225, 239. In this case, therefore, had the complaint alleged restraint and coercion of employees in violation of Section 8 (b) (1) (A), the violence could have been litigated to determine whether it fell within the ban of that section, but, as the Board stated (R. 55), since no such allegation was made, it was "not called upon to decide" that dissociated question.[57] The

[57] Indeed, to have decided the issue might well have entailed prejudicial procedural irregularity. See *National Labor Relations Board* v. *Fulton Bag & Cotton Mills*, 175 F. 2d 675, 677 (C. A. 5).

selective manner in which Congress fashioned different legal tools to reach the separate questions entailed in each reinforces the conclusion that the coercive character of the means employed, which is the province of Section 8 (b) (1) (A), is not to be confused with the object sought, which is the province of Section 8 (b) (4) (A) and (B).

Furthermore, to make violence a criterion of secondary activity creates a serious risk of requiring indiscriminate invocation of preliminary injunctive relief ancillary to final Board action. With respect to all unfair labor practices other than those enumerated in Section 8 (b) (4) (A), (B), and (C), Section 10 (j) empowers the Board, *in its discretion,* to seek injunctive relief preliminary to its final administrative adjudication of the practices of which complaint is made. However, as to the practices listed in Section 8 (b) (4) (A) (B) and (C), Section 10 (l) makes it mandatory to seek interlocutory injunctive relief pending the Board's final action.[58] This means that in every case of violence on a primary picket line, if such violence were to make the activity a violation of 8 (b) (4) (A), it would be mandatory to seek injunctive relief. On the other hand, if the violence as such is pertinent only to a violation of 8 (b) (1) (A), it remains discretionary whether the

[58] Section 10 (l) also governs injunctive relief with respect to Section 8 (b) (4) (D) violations, but as to these recourse to injunctive relief is discretionary. See *Herzog* v. *Parsons*, 181 F. 2d 781 (C.A.D.C.) certiorari denied, 340 U. S. 810.

seriousness of the situation makes a request for injunctive relief appropriate. It is most unlikely that Congress intended in every case of primary picket line violence, without exception, to require that preliminary injunctive relief be sought and to exclude from this decision any play for administrative discretion. The scheme of injunctive relief thus reflects the inappositeness of making the question whether picketing is primary or secondary turn on the presence or absence of violence.

Accordingly, since Section 8 (b) (4) (A) and (B) is concerned with the object to which the inducement is directed, not the repressive nature of the means by which the inducement is effected, violence is immaterial to the existence of secondary action. Therefore, here, in prohibiting secondary action, just as in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 513, the statute "draws no distinction between the restraints effected by violence and those achieved by peaceful but oftentimes quite as effective means. Restraints not within the Act, when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence."

E. THE VALIDITY OF A UNION'S ACTIONS IN RELATION TO SECTION 8 (b) (4) (A) AND (B) DOES NOT TURN ON WHETHER THE UNION MEETS THE CONDITIONS PRESCRIBED BY THE PROVISO CONTAINED AT THE END OF SECTION 8 (b) (4)

In the court below, respondent relied in part upon the proviso contained at the end of Section

8 (b) (4) to invalidate the distinction between primary and secondary labor action. The proviso states:

> That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act

Respondent contended that, in ascertaining whether activity falls within the ban of Section 8 (b) (4) (A) and (B), the question is not whether it is primary or secondary in character, but whether it meets the conditions of the proviso, namely, that the strike be called by a union entitled to recognition. In this case, the argument runs, since the picketing was sponsored by a minority union, the activity is prohibited by Section 8 (b) (4) (A) and (B), and is not exempted by the proviso.[59] In essence, according to this contention, which the court below evidently did not accept, the distinction drawn by Section 8 (b) (4) (A) and (B) is between a majority and a minority strike and not between a primary and secondary strike.

We shall show that this reading of the proviso, (1) transforms the legislative aim of Section 8

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[59] Respondent's brief in the court below, p. 21.

(b) (4) (A) and (B) from a sanction directed at secondary action into a sanction directed at minority action, (2) does not eliminate the need for a distinction between primary and secondary conduct, and (3) attributes to the proviso, rather than to the substantive sections themselves, the function of defining the scope of the offense.

1. Respondent's interpretation of the proviso would forbid every strike called by a minority union, including the primary organizational strike. Under its view it is irrelevant whether the strike is primary or secondary.

Ordinarily, however, "in the absence of applicable legislation to the contrary, the propriety of an object of concerted action by workers does not depend upon whether the object has the support of a majority of the workers affected. Concerted movements which ultimately gain the support of majorities are frequently begun by minorities."[60] It is a commonplace that a primary organizational strike, and certainly primary organizational picketing and allied inducement, frequently begins as minority action in an effort to obtain the adherence of a majority.[61] Indeed, in sustain-

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[60] Restatement, Torts, Ch. 38, Topic 2, p. 120 (1939).

[61] *E.g., Park & Tilford Import Corporation* v. *International Brotherhood, Local No. 848*, 27 Cal. 2d 599, 165 P. 2d 891; *AFL* v. *Swing*, 312 U. S. 321; *Cafeteria Employees Union* v. *Angelos*, 320 U. S. [illegible]3; Restatement, Torts, § 785, Comment (b).

ing the legislative policy of a state which prohibited picketing of an employer to compel him to coerce his employees' choice of a bargaining representative, this Court recently expressed a reservation concerning the constitutional propriety of reaching "picketing directed at employees for organization purposes," pointing out that the state action in issue did not "prohibit picketing of workers by other workers." *Building Service Union* v. *Gazzam*, 339 U. S. 532, 539-540.

Nevertheless, it is clear that, although minority action is a familiar feature in the labor scene, the consequence of respondent's interpretation of the proviso is to outlaw all strikes and associated inducement conducted by a minority union regardless of the circumstances attending it. Respondent deduces this sweeping policy determination by indirection, through an equivocal proviso. But it is inconceivable that Congress intended the proviso to have this effect, for no suggestion that minority strikes were being outlawed by this Section was voiced by anyone during the course of lengthy and heated legislative deliberation concerning virtually every controversial matter in the labor relations field. The short answer, of course, is that Section 8 (b) (4) (A) and (B) was aimed, not at eliminating any possible abuse which may inhere in primary minority action, but at curbing the evil which Congress found to exist in secondary action. Discussion was directed, therefore, at the issue of

secondary, not minority, labor action. To displace the articulated purpose of Congress with an unrevealed purpose brings "into question the candor of Congress as well as the integrity of the interpretative process." [62]

The circumspect manner with which Congress treated union minority action when it was in fact considering that question is its own refutation of the extravagant purpose which respondent would impute to the proviso to Section 8 (b) (4) (A) and (B). Congress rejected a proposal making the validity of a strike dependent upon affirmative authorization given by a majority of employees in an election. As this Court recently held (*United Automobile Workers* v. *O'Brien*, 339 U. S. 454, 458):

> . . . The federal Act . . . does not require majority authorization for any strike. This requirement of approval by a majority of the employees was contained in the bill which passed the House of Representatives;* but the Act as finally adopted deliberately refrains from imposing the prerequisite of majority approval in each of its references to strike votes. §§ 203 (c), 209 (b)-210.

* H. R. 3020, 80th Cong., 1st Sess., § 2 (11) (B) (vi) (h) (1947). The legislative history demonstrates that this proposal was rejected on the merits, and not because of any desire to leave the states free to adopt it. See, *e.g.*, H. R. Rep. No. 510, 80th Cong., 1st Sess.,

[62] *Western Union Telegraph Co.* v. *Lenroot*, 323 U. S. 490, 508.

34-35 (1947); testimony of Governor Stassen, *Hearings before Senate Committee on Labor and Public Welfare on S. 55 and S. J. Res. 22*, 80th Cong., 1st Sess., 562-65, 572-78, 586-89 (1947).

More particularly, for present purposes, the only explicit limitation placed upon the organizational strike activity of a union by virtue of its minority status is contained in Section 8 (b) (4) (C) of the Act. It provides that it shall be an unfair labor practice for a labor organization to engage in or induce a strike where an object is "forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of Section 9".[63] The House bill, as reported and passed,[64] and an early version of the Senate bill[65] contained a broader prohibition banning any recognition strike

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[63] See, H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 44, in 1 Leg. Hist. 548; S. Rep. No. 105, 80th Cong., 1st Sess., 22 in 1 Leg. Hist. 428; 93 Cong. Rec. 1844, 1846, 4905, in 2 Leg. Hist. 981-982, 986, 1455; 93 Cong. Rec. 136; 5 *Hearings before Committee on Education and Labor, House of Representatives, on Bills to Amend and Repeal the National Labor Relations Act*, 80th Cong., 1st Sess., 3161-62; 4 *Hearings before the Committee on Labor and Public Welfare, United States Senate, on S. 55 and S. J. Res. 22*, 80th Cong., 1st Sess., 1905.

[64] H. R. 3020, 80th Cong., 1st Sess., Sec. 12 (a) (3) (c) (i), in 1 Leg. Hist. 79, 205; see also, H. Rep. No. 245, 80th Cong., 1st Sess., 44; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 59; both in 1 Leg. Hist. 335, 563.

[65] S. 360, 80th Cong., 1st Sess., Sec. 13 (b) (1) (January 27, 1947).

except where the labor organization was certified by the Board as the exclusive bargaining representative. In its ultimate evolution, this total ban of any recognition strike, except in support of the status of a certified union, was narrowed to its present form, which prohibits a recognition strike only if another union has been certified; thus, instead of preconditioning the validity of a primary recognition strike upon the existence of a certification of the striking union, Congress did the reverse, and preconditioned the validity of such a strike solely upon the absence of certification of another union. As a matter of deliberate choice, therefore, except for the narrowly-defined activity regulated by Section 8 (b) (4) (C), Congress left unrestricted the right of a labor organization, whether majority or minority, to engage in a recognition strike. The Joint Committee on Labor-Management Relations, in the discharge of its function to study and investigate "the administration and operation of existing Federal laws relating to labor relations" (Title IV, Sec. 402 (7) of the Act) has reported concerning strikes for recognition (Com. Print., Rep. No. 986, Part 3, 80th Cong., 2nd Sess., 70-71):

> Both the bill passed by the House of Representatives in 1947 [66] and early committee

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[66] H. R. 3020, 80th Cong., 1st Sess., Sec. 12 (a) (3) (C) (ii), in 1 Leg. Hist. 205-206.

versions of the Senate bill [67] contained some form of prohibition against a strike for a purpose for which the act provided an administrative remedy. Such a provision would have prohibited a strike for recognition, since the labor organization has available the certification processes of the Board. *The Taft-Hartley law's only limitation upon such strikes is that provided by Section 8 (b) (4) (C). The right to strike for recognition is only foreclosed when another labor organization has been certified as the bargaining representative.* (Emphasis supplied.)

A labor organization may lose an election in which it was the only union on the ballot and the next day call a legal strike to force the employer to recognize it as the bargaining agent for those employees who have rejected it. A number of instances have just been called to the committee's attention (hearings, p. 267).

Many labor organizations have enjoyed recognition by, and contracts with, employers without ever having been certified by the Board. The employers have not first required such unions to prove their majority status in an election conducted by the Board, being satisfied to rely upon a check of membership cards, dues records, or other proof that they were the choice of the majority of the employees. A union seeking to supplant one of these uncertified bargaining

[67] S. 360, 80th Cong., 1st Sess., Sec. 13 (b) (2) (January 27, 1947).

representatives may call a strike for such purpose without violating Section 8 (b) (4) (C). This was the situation in the recent *Perry-Norvell Co.*, Case (9-CB-3) [80 NLRB 225], in which an uncertified union held a contract with the employer and another union struck for bargaining rights.

Present law in no way limits the primary strike for recognition except in the face of another union's certification. It has frequently been suggested that Section 8 (b) (4) (C) should be broadened to cover the situations where another union has been recognized, or has a contract, and where the striking union has failed to win recognition at the ballot box. A fairly good case can be made for such an amendment. It would not go as far as the suggestion prohibiting strikes for purposes for which the law provides an administrative remedy, for the union seeking bargaining rights in an unorganized shop might still strike for it. [Emphasis supplied.]

There are two factors which might be considered in connection with any further restrictions upon recognition strikes. The first is the time element involved in acquiring bargaining rights by the orderly procedure provided by the act. If the employer will not consent to an election, it now requires an average of 84 days to dispose of a representation case (hearings, p. 1138). It may be questioned whether or not the mere availability of an administrative remedy is sufficient to restrict the right to

strike. Perhaps the remedy should be prompt as well as available.

A second consideration arises out of the fact that Section 9 (c) (3) limits elections to one in a given year. A labor organization which loses an election and strikes for recognition the next day or the next week may be condemned for such action, but there may be equities militating against it having to wait a whole year. The situation may arise where some action by the employer, or a more successful organizing campaign, causes the union to acquire an overwhelming majority within a few weeks following an election in which it has been rejected by the employees.

The committee believes that further experience with the act is advisable before consideration is given to broadening Section 8 (b) (4) (C).

Thus far the experience of Congress has not led it to enlarge the scope of Section 8 (b) (4) (C).[68]

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[68] In 1949, nothing came of an attempt to repeal Section 8 (b) (4) (A) and (B), by repealing the Taft-Hartley Act, and to enlarge the object forbidden by Section 8 (b) (4) (C), by amending the reinstated Wagner Act, to include compelling "an employer to bargain with a particular labor organization as the representative of his employees if another union is certified," or "the employer is required by an order of the Board to bargain with another labor organization," or "the employer is currently recognizing another labor organization . . . and has executed a collective-bargaining agreement with such other labor organization, and a question concerning representation may not appropriately be raised under Section 9 of this Act." S. 249, 81st Cong., 1st Sess.,

Thus, by interpreting the proviso in its relation to Section 8 (b) (4)(A) and (B), so as to forbid any strike except that engaged in by a majority union, respondent attributes to Congress an objective which it has purposely renounced.

The full implication of respondent's view is apparent when it is considered that it bans strike activity by unions, not only for organizational purposes, but for any purpose, unless the union possesses majority status entitling it to exclusive recognition. However, in the absence of a union possessing the status of exclusive representative, employees may, "even if . . . a minority," designate a union to represent and bargain for them and to make "fair contracts on their behalf." *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 236-238. The consequence of respondent's view would be to bar to such employees the benefits of strike pressure exerted by its chosen union in support of demands it may legally make, since the union is not an exclusive representative. Finally, apart from strikes over the negotiation and administration of "members only" contracts, employees without exclusive rep-

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Sec. 8 (b) (1) (January 31, 1949). See also, S. Rep. No. 99, 81st Cong., 1st Sess., 59, 67-68, Minority Views, 29. Even this enlarged objective does not go so far as respondent would in his interpretation of Section 8 (b) (4) (A) and (B), for it still permits a recognition strike where a majority union, not certified or required by a Board order to be recognized, has no contract, or where its contract is nearing its expiration so that a challenge to its status is appropriate, or where there is no other union in the picture.

resentation frequently engage in work stoppages to back isolated demands of diverse character, sometimes under the sponsorship of unions [69] and sometime without conventional union assistance,[70] and in either posture their concerted activity is protected from employer retaliation. At the least, however, the consequences of respondent's view would be to outlaw all such work stoppages sponsored by unions which are not exclusive representatives, permitting only those stoppages in which employees engage unaided. Indeed, all such work stoppage may well be banned, for by associating themselves as a common group to present their joint demand backed by a concerted withholding of labor, employees constitute themselves a "labor organization" within the Act's meaning (*National Labor Relations Board* v. *Kennametal, Inc.*, 182 F. 2d 817, 818 (C. A. 3)),[71] and as such they may not

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[69] *Carter Carburetor Corp.* v. *National Labor Relations Board*, 140 F. 2d 714, 717-718 (C. A. 8); *Firth Carpet Co.* v. *National Labor Relations Board*, 129 F. 2d 633 (C. A. 2).

[70] *National Labor Relations Board* v. *Kennametal, Inc.*, 182 F. 2d 817 (C. A. 3); *Gullett Gin Co* v. *National Labor Relations Board*, 179 F. 2d 499, 502 (C. A. 5), reversed on other grounds, Jan. 15, 1951; *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840, 843-844 (C. A. 4).

[71] Section 2 (5) of the Act defines a labor organization to mean "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

strike because the "labor organization" is not entitled to recognition. Clearly the proscription of such traditional strike activity was not within the contemplation of Congress.

Thus, respondent's interpretation of the proviso in its relationship to Section 8 (b) (4) (A) and (B) falls, for by displacing the criterion of secondary labor action with the test of majority union action, respondent changes the purpose of Congress and reaches results foreign to its aim.

2. The theory behind respondent's argument is that Section 8 (b) (4) (A) and (B) prohibits all strikes and associated inducement, for all forms of labor pressure in furtherance of a demand have the cessation of business as an objective (*supra*, p. 19 and n. 6); and that the only activity saved from this flat ban is that which falls within the exculpatory language of the proviso.[72] In effect, therefore, every strike called by a majority union is permitted, for the only test of legality prescribed by the proviso is that the strike be the authorized action of a union entitled to recognition. In consequence, even a secondary strike, so long as it is called by a majority union, would be proper. In

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[72] As articulated by an exponent of the so-called proviso theory, Section 8 (b) (4) (A) covers "the rupture of *any* kind of business relationship," and "without the proviso's qualifications," it "prohibits all strikes and all inducements to strike." Petro, *The Enlightening Proviso*, 1 Labor Law Jour. 1075, 1076, 1078 (Nov. 1950).

this case, therefore, had a strike of the Sales House employees been called by a labor organization representing them in order to support the Union's recognition claim against Kaplan, the strike would be saved from the ban of Section 8 (b) (4) (A) and (B) by virtue of the proviso. The only way to avoid this patently unsound result is to imply a distinction between primary and secondary action.[18] Invocation of the proviso, therefore, cannot do away with the need for the distinction which respondent denies that Section 8 (b) (4) (A) and (B) permits.

3. The proviso is not a limitation on Sections 8 (b) (4) alone, but it attaches to all of Section (8) (b), including 8 (b) (1), (2), (3), (5), and (6), in addition to 8 (b) (4) (A), (B), (C), and (D). Since the proviso in terms has a latitude which extends to all of 8 (b), it is unreasonable to interpret the reach of subdivision 8 (b) (4) (A) and (B) exclusively by reference to qualifications which have a bearing on other subdivisions as well. Moreover, so to do distorts the usual function of an exculpatory proviso in that, instead of being an

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[18] The words of the proviso, condoning "a refusal by any person to enter upon the premises of any employer (*other than his own employer*)," cannot serve rationally to distinguish between primary and secondary strikes. For employees who refuse to cross a picket line at their own employer's place of business, *i.e.*, engage in a primary strike, would be violating the Act; only employees who refuse to cross picket lines at premises other than their own employer's, would be protected by the proviso.

exception to a wrong already defined, the nature of the offense is not known until the proviso is reached. This is so because, if the only qualification upon the literal meaning of 8 (b) (4) (A) and (B) is that contained in the proviso, 8 (b) (4) (A) and (B), read alone, reaches all strikes and associated inducement, and no one supposes that Congress intended that such conduct should be, without more, a wrong. Cf. *United Automobile Workers* v. *O'Brien, supra.*

Reading the proviso as applicable to all of 8 (b), and not merely to subsection (4) (A) and (B), the proviso acquires a meaning in consonance with the normal sense of an exculpatory proviso. With respect to each of the dissimilar union unfair labor practices listed in the provisions of 8 (b), the function of the proviso is to define the circumstances under which, *assuming the strike or associated inducement to be otherwise unlawful by virtue of its conflict with those provisions alone,* it is nevertheless not unlawful for the employees of another employer to refuse to enter the premises of the struck employer. Until the strike or its inducement is otherwise determined to be illegal, recourse to the exculpatory aspects of the proviso is superfluous, and exploration of its substantive content is unnecessary.[74] In this case, since the Union's

[74] The Board has deliberately abstained from delineating the meaning of the proviso in its relationship to Section 8 (b) (4) (A) and (B), for the problems it raises are many, and, as in this case, their resolution has thus far been unnecessary to the interpretation of Section 8 (b) (4) (A) and

action did not offend Section 8 (b) (4) (A) and (B), it is immaterial that the Union did not meet the conditions prescribed by the proviso, for there is no occasion to reach it.

(B). *Interborough News Co.*, 90 NLRB, No. 297, 26 LRRM 1440; *Cyril de Cordovo & Bro.*, 91 NLRB, No. 187, 26 LRRM 1628, 1631. The ablest treatment of the proviso which we know is that of Trial Examiner Arthur Leff in the *Interborough* case, and without inferentially subscribing to the views there expressed, we set forth his discussion in Appendix B, *infra*, pp. 88-96, to illustrate the troubling character of the questions raised. Contrast also, Tower, *The Puzzling Proviso*, 1 Labor Law Journal 1019 (October 1950), with Petro, *Taft-Hartley and the "Secondary Boycott,"* 1 Labor Law Journal 835 (August 1950), and *The Enlightening Proviso*, 1 Labor Law Journal 1075 (November 1950). It is unnecessary also for the purposes of this argument to define the full affirmative significance of the proviso; it is necessary only to show, as we have done, *supra*, pp. 66-80, that it cannot have the import which respondent attributes to it.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below be reversed, insofar as it holds that the Union's conduct towards the employees of Sales House violates Section 8 (b) (4) (A) and (B) of the Act.

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

MOZART G. RATNER,
Assistant General Counsel,

BERNARD DUNAU,
Attorney,
National Labor Relations Board.

FEBRUARY, 1951.

APPENDIX A

The relevant provisions of the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141 *et seq.*), are as follows:

* * * * *

SEC. 2. When used in this Act—

* * * * *

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment * * *.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

SEC. 8. * * *

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(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees

in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

* * * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object therof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another

labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided,* That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

* * * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

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SEC. 10. * * *

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(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate tem-

porary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining orders as it deems just and proper.

* * * * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such

temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

* * * * *

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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APPENDIX B

UNITED STATES OF AMERICA
Before the National Labor Relations Board
Division of Trial Examiners
Washington, D. C.

Case No. 2-CC-103

In the Matter of
NEWSPAPER AND MAIL DELIVERERS' UNION
OF NEW YORK AND VICINITY
and
INTERBOROUGH NEWS COMPANY

* * * * * *

INTERMEDIATE REPORT

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Directly involved in this case is the question of how the proviso to 8 (b) (4) is to be construed. For, if, as the Respondent urges, the proviso excepts from the scope of 8 (b) (4) (A) the particular conduct of which the General Counsel here complains, that, alone, would be dispositive of the case. And it would make it unnecessary to decide whether, absent the proviso, the conditions necessary to spell out a violation of Section 8 (b) (4) (A) have been met by the facts found. The problem of decision in this case is not a simple one. The exact meaning of the terms used in the proviso is somewhat obscured, at least at first blush; and so, too, is the precise relationship of the proviso to the general prohibitory legislative language to which it is addressed. And there are to date no

Board or Court interpretations of the proviso to provide guidance.[17]

The meager legislative history casts some light on the proviso, but not enough completely to illumine. The Committee Reports contain but one specific reference to the proviso, the debates none. That single reference is to be found in the Senate Committee Report, where it is said:[18]

> Attached to section 8 (b) (4) is a proviso clause, which makes it clear that it shall not be unlawful for any person to refuse to enter upon the premises of any employer (other than his own), if the employees of that employer are engaged in a strike authorized by a union entitled to exclusive recognition. In other words, refusing to cross a picket line or otherwise refusing to engage in strike breaking activities would not be deemed an unfair labor practice unless the strike is a "wildcat" strike by a minority group.

In seeking the Congressional intent, it is helpful to begin by adverting briefly to some basic principles of statutory construction. Thus, it is an elementary rule that "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative and superfluous, and so that one part will not destroy another unless the provision is the result of obvious mistake or error."

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[17] The only case which thus far has reached the Board where the proviso may have been involved is *Matter of Oil Workers International Union* and *The Pure Oil Company*, 84 N. L. R. B., No. 38. That case, however, was decided upon different grounds, and the proviso was referred to only in the dissent.

[18] Sen. Rept. No. 105, 80th Cong., 1st Sess., p. 23.

(Sutherland, *Statutory Construction*, 3d ed. § 4705) The particular inquiry must be directed not to the abstract force of the words but to the sense in which they were intended to be used in the Act. (*Ibid*, § 4706) Where legal terms are used in a statute, they are presumed to have been used in their legal sense. (*Ibid* § 4919) "There is need to keep in view also the structure of the statute, and the relation, physical and logical, between its several parts." (*Duparquet* v. *Evans*, 297 U. S. 216, 218)

Perhaps the best approach to the problem is to examine, in the light of its reasonableness and compatibility with the principles set out above, each of the possible interpretations of the proviso that has been argued or suggested. There are three:

1. The first—representing the position taken by the General Counsel in his brief—is that Congress was thinking merely of personal rights, and not rights of labor organizations, when it used the term "person" in the proviso, and that it intended nothing more by the proviso than to reaffirm the right of an employee as an individual to refuse to enter upon the premises of an employer against whom ratified or approved strike action has been taken by an exclusive bargaining representative. To support this view, the General Counsel relies in his brief upon a single argument. Because—he argues—the proviso uses the words, "other than his own employer," and because labor organizations do not have "employers", it follows that only individual rights could have been contemplated. In short, the General Counsel would interpret the proviso by giving literal, abstract force to certain

words used, without reference to the special sense in which the words were intended to be used in the Act, and without regard to "the structure of the statute, and the relation physical and logical" between the proviso and the section of the Act to which it is attached. By this approach the General Counsel is able in his brief to ignore Section 2 (1) of the Act, which defines "person" as including, *inter alia*, "labor organizations." And he is able also to overlook that where Congress elsewhere in the statute evinces an intent to reaffirm individual rights, it speaks in terms, not of a "person", but of an "individual employee.' [19]

The General Counsel's proposed interpretation fails to meet the test of close scrutiny in other respects as well. Thus, if in fact it was Congress' intent simply to reaffirm fundamental individual rights, and nothing more, no reason appears why it should have confined application of the proviso exclusively to situations involving authorized strikes by majority representatives. In terms of fundamental personal rights, as distinguished from legally protected concerted action, the "lawful" right of a person *as an individual* to refuse to enter upon struck premises is no less where the strike is a "wildcat" one than where it is an approved one; it is no greater where the strike is by a union

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[19] See Section 502, Labor Management Relations Act, 1947:

> Nothing in this Act shall be construed to require an *individual employee* to render labor or services without his consent, nor . . . make the quitting of his labor by an *individual employee* an illegal act; nor shall [Court process issue] to compel the performance by an *individual employee* of such labor or services . . . (Emphasis supplied.)

entitled to exclusive recognition than where it is by a union that is not. Congress must be assumed to have been aware of this when it enacted the statute. Moreover, the General Counsel's proposed interpretation fails to explain on a rational basis the purpose of linking the proviso to a subsection of the Act which neither restricts rights nor defines obligations of employees *as individuals*. The only thing made "unlawful" under Section 8 (b) (4) is for a *labor organization* or *its agents* to engage in certain defined unfair labor practices.[20] If any interference is warranted, therefore, it is that Congress intended to relate "unlawful", as used in the proviso, to "unfair labor practice," as used in the text of the subsection of which it is part, and to equate those terms. That such was indeed Congress' intent is proved by such legislative history as appears in that point. It is made particularly apparent in the Senate Committee's explanation of the proviso, quoted above, wherein it

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[20] The general body of Section 8 (b) (4) does not, to be sure, use the term "unlawful." However, Section 303, the companion section of the Labor Management Relations Act, 1947, which provides for damage suits, uses that term in lieu of "unfair labor practice." That section discloses on its face that the conduct referred to therein is to be deemed "unlawful, for the purposes of this section only." In the course of the Senate debates, Senator Taft, a sponsor of the legislation made it clear that he equated "unfair labor practice" as used in Section 8 (b) (4) with "unlawful" as used in Section 303, and that the only purpose in making the change in terminology was so "that a suit for damages could be brought for this kind of thing." Senator Taft also noted, that "this amendment [Section 303] deals with labor organizations and the *only unlawfulness is for a labor organization to do something*" (93 Cong. Rec. 5060-5063; emphasis supplied).

is explicitly pointed out that the proviso was intended to make clear, for example, that a refusal to cross a picket line "would not be deemed an *unfair labor practice.*"[21] The contrary interpretation suggested by the General Counsel can be reached only by reading the proviso as if it existed in a vacuum rather than as an integral part of Section 8 (b) (4), by ignoring the statutory definition of the term "person," and by giving the term "unlawful" a sense different from that which Congress intended it to possess. Acceptance of the General Counsel's interpretation would leave the proviso devoid of any real meaning or effect, and render it wholly superfluous to the statutory scheme. It is not reasonable to suppose that such was Congress' purpose or intent.

2. It has also been suggested, although not by the General Counsel, that the term "unlawful" in the proviso should be interpreted as being synonymous with unprotected concerted activity. This interpretation would hold that the proviso should be read as protecting employees from reprisal action at the hands of their employer for engaging in the particular form of concerted activity therein described; but not as exculpating a labor organization, as such, from liability for engaging in like activity, or for inducing or encouraging employees to do so. The unreasonableness of this construction is readily demonstrable. Like the proposed construction of the General Counsel previously considered, it fails to give due consideration to "the structure of the statute and the relation, physical and logical between its several parts"—more par-

[21] And see, too, the preceding footnote.

ticularly, to the fact that the proviso is attached to a subsection of the Act concerned primarily with union unfair practices, and not, except perhaps derivatively, with employee rights protected by Section 7. Besides, it clothes the term "unlawful" with a sense different from that which, as the legislative history indicates, Congress intended that term to possess. Moreover, acceptance of this suggested construction would lead to curious, if not absurd results. Thus for example, individual employees, who in an appropriate situation had agreed among themselves not to enter upon the premises of a struck employer, not their own, would be acting in protected concert; but if the same individuals, organized into a union, had undertaken like action at an official union meeting, so as to make their action union action, their union would be guilty of an unfair labor practice. Surely, in the absence of clear evidence to the contrary —and there is none whatever—this may not reasonably be taken to have been Congress' intent.

3. The third view—and the one I believe to be correct—is that the proviso was designed to restrict the generality of Section 8 (b) (4) (A), by excluding from the forms of concerted activity proscribed by that section, the particular type of activity which the proviso defines. This construction is in harmony with the wording of the proviso —if its key words are read, not in the abstract, but in their legal sense as used in the statute and in context with the general language of Section 8 (b) (4) (A). Thus, for reasons previously stated, the term "unlawful" in the proviso is to be equated with "unfair labor practice." The term "refusal" in the proviso must be viewed as related to "con-

certed refusal" in the body of Section 8 (b) (4); for that is the only form of refusal with which the section is concerned. The term "person" is to be read, in accordance with the statutory definition, as including "labor organization"; and within that term would also fall employees for whose concerted activity a labor organization normally would be responsible, because of acts of inducement and encouragement on its part. The phrase "premises of any employer (other than his own)," considered in context with Section 8 (b) (4) (A), is reasonably to be construed as having been designed solely to identify the premises referred to as that of the "any other producer, processor or manufacturer" or of the "any other person" of whom 8 (b) (4) (A) speaks—in short, the premises of the employer involved in the primary dispute in a secondary boycott situation which, but for the proviso might otherwise be construed to fall within the ban of 8 (b) (4) (A).

When the terms of the proviso are read in their statutory sense and in contextual relationship to the entire section, the conclusion seems almost unavoidable that the purpose of the proviso was to make clear that Congress intended to exclude from the reach of Section 8 (b) (4) (A) the narrow form of concerted activity which the proviso defines. The care with which Congress circumscribed the proviso—confining its scope to concerted action localized at the place where primary picketing and other direct strike activities normally occur,[22] and

[22] Cf. *Matter of Oil Workers International Union, Local Union 346 (CIO)* and *The Pure Oil Company, supra; Matter of United Electrical, Radio and Machinery Workers of America* and *Ryan Construction Corporation*, 85 N.L.R.B., No. 76.

further limiting its application only to situations involving approved strikes—lends added support to this conclusion. Unlike the other suggested interpretations above considered and rejected, the construction of the proviso here found to be correct is entirely consistent with—indeed it is reinforced by—the legislative history adverted to above. Unlike the others, it achieves, a logical concord between the proviso and the balance of the section of which it is part. And it alone gives rational meaning and operative effect to the provisions of the proviso, without otherwise creating conflicts in the statutory scheme.

* * * * *

Dated at Washington, D. C., this 29th day of November 1949.

[s] ARTHUR LEFF
Trial Examiner

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 313

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF OF INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.

HAUSER PRINTING CO., INC., NEW ORLEANS

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IN THE

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NATIONAL LABOR RELATIONS BOARD,
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INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.,
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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF OF INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.

Respondents are International Rice Milling Company, Inc., American Rice Milling Company, Inc., Louisiana State Rice Milling Company, Inc., Kaplan Rice Mills, Inc., Joseph Dore, Sr., doing business as Supreme Rice Mill, and Monte Loving, doing business as Loving Rice Mills. Respondents are domiciled in the State of Louisiana and are doing business in the cities of Crowley, Rayne, Abbeville and Kaplan, Louisiana.

OPINIONS BELOW

The opinion of the U. S. Court of Appeals for the Fifth Circuit is reported at 183 F. (2d) 21. The findings of fact, conclusions of law, and order of the Board are reported at 84 N.L.R.B. 360.

JURISDICTION

The jurisdiction of this court is invoked under section 10(e) of the National Labor Relations Act, as amended, and under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

The question presented by this case is whether a labor organization, while engaged in a strike for organizational and recognition purposes against employer A at a time when the labor organization does not represent a majority of the employees of employer A, may attempt to induce and encourage the employees of employer B by violent and non-violent means to cease transporting, handling, or otherwise dealing in the products of employer A, without violating Section 8(b)(4) (A) and (B) of the National Labor Relations Act, as amended.

STATEMENT OF THE CASE

Respondents are in the business of operating rice mills in and around Crowley, Louisiana, which is the center of the rice industry of that state. In 1946, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 201, A.F.L., hereinafter referred to as the "Union", began an organizational campaign among the employees of respondents. In February 1947, the Union could not prove its majority status among the employees of any

of respondents. In September, 1947, the Union renewed its organizational activities and in the beginning of that month called a strike among the employees of respondents. In no instance did a majority of the employees of any one of respondents go out on strike. At the plant of the Kaplan Rice Mills, Inc., none of the employees of the company went on strike, although a picket line composed of non-employees appeared in the vicinity of the plant. Some instances of violence and lawlessness were caused at the various locations of respondents rice mills as a result of the Union's attempts to have its picket lines respected. The words "buck shot" and "dynamite" were also used by the representatives of the Union in efforts to keep employees of other employers from crossing the Union's picket lines.

The question presented by this case, however, arises out of an incident which occurred on or about October 21, 1947, in the vicinity of the Kaplan Rice Mills, Inc. plant, located at Kaplan, Louisiana. On that date a truck of The Sales and Service House, driven by two employees of that firm, approached the Kaplan Mill to obtain some rice for the Sales House. The Sales and Service House is engaged in the business of selling feed and grain and it purchases some of its stock from the Kaplan Rice Mills. As the truck of the Sales House approached the Kaplan Mill, pickets of the Union stationed in the vicinity of the mill asked the driver to stop, formed a line across the street leading to the mill, and told the driver that they could not enter the mill because "we got a strike on". The driver of the Sales House truck turned around and returned to the highway where they were met by a representative of the Kaplan Mill, who suggested that the truck might be able to enter the mill by taking a different street. As the Sales House

truck approached the mill for the second time, on a different street, the union pickets came running from the first street and stoned the truck and its occupants in an effort to prevent the truck from entering the Kaplan Mill. In spite of the stoning by the Union pickets, the Sales House truck entered the mill nevertheless.

The Trial Examiner of the National Labor Relations Board found that the Union had violated Section 8(b)(4)(A) and (B) of the Act by virtue of the above related incident dealing with the employees of the Sales and Service House. The Board itself, however, dismissed the complaint with regard to the above incident for the reason that the activities of the Union there were considered by the Board to be "primary" activities and therefore were privileged under the law. Respondents petitioned the Court of Appeals for the Fifth Circuit to review the case, and that Court held that the Board's dismissal of the complaint with regard to the above incident was erroneous and that the incident constituted a violation of Section 8(b)(4)(A) and (B) of the Act. The Board petitioned for, and was granted, a writ of certiorari by this Court.

SUMMARY OF ARGUMENT

Respondents arguments in support of the decision of the Court of Appeals for the Fifth Circuit are summarized as follows:

(1) The action of the Union in this case is clearly violative of Section 8(b)(4)(A) and (B) of the National Labor Relations Act.

(2) Section 8(b)(4)(A) and (B) makes no refer-

ence to "secondary boycotts" or to "primary" or "secondary" picketing.

(3) The Board's attempt to read into Section 8(b)(4)(A) and (B) a distinction between "primary" and "secondary" picketing and to sanction violations of the law in "primary" cases is unwarranted and erroneous for the reasons:

(a) There is no room for interpretation or construction of a statute where the language is clear and there is no ambiguity.

(b) Congressional debates and committee reports can be used only to solve doubt, not to create it.

(c) There is evidence from the committee reports and congressional debate that Congress desired the result which was arrived at in this Case by the Court below.

(d) The Board's interpretation of Section 8(b)(4)(A) and (B) of the National Labor Relations Act is entitled to no special respect because of any supposed "expertness" of the Board in interpreting this law.

(4) The interpretation placed on Section 8(b)(4)(A) and (B) by the Court below leaves ample room for concerted activities by Unions and does not lead to absurd results.

(5) The interpretation placed on Section 8(b)(4)(A) and (B) by the National Labor Relations Board leads to absurd and confusing results.

(6) The presence of the proviso in Section 8(b)(4) clearly indicates that it was intended by Congress to be the only exception to the rules set out in Section 8(b)(4)(A) and (B).

I.

THE ACTION OF THE UNION IN THIS CASE IS CLEARLY VIOLATIVE OF SECTION 8(b)(4) (A) and (B) of the NATIONAL LABOR RELATIONS ACT.

For the convenience of the Court Section 8(b)(4) (A) and (B) of the National Labor Relations Act as amended is set forth below. For completeness, there is also set forth the proviso which appears at the end of Section 8(b)(4); the role of this proviso in the instant case will be discussed later in this brief.

"Section 8 * * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

(A) forcing or requiring any employer or self employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(B) forcing or requiring any other employer to recognize or bargain with a labor or-

ganization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 9;

* * * * *

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;"

A careful reading of the above section of the law will show that the facts as set forth in the statement of the case make out a clear violation of that section. It may be helpful to present to the court a skeletonized paraphrase of the above section of the Act, interpolating the names of the parties in the instant case:

"Section 8 * * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(4) * * * to induce or encourage the employees of the Sales House to engage in * * * a concerted refusal in the course of their employment to transport or otherwise handle * * * commodities [from the Kaplan plant] where an object thereof is:

(A) forcing * * * The Sales House to cease * * * doing business with Kaplan, and

(B) forcing * * * Kaplan to recognize or bargain with the Teamsters Union as the representative of its employees [at a time when the Union has not] been cer-

tified as the representative of such employees under the provisions of Section 9;"

Respondents submit that the action of the Union with regard to the employees of the Sales House constitutes a clear violation of Section 8(b)(4) (A) and (B) as set out above. The Union did not represent a majority of the employees of the Kaplan Mill—in fact, it appears that it did not represent a **single** employee of the Kaplan Mill, since none of the employees of the mill went out on strike. In spite of this status of representation the Union nevertheless picketed the rice mill and also actively induced and encouraged the employees of the Sales House not to make any deliveries to the Kaplan Mill. It is important to note here that the actions in question were **not** directed to the employees of the Kaplan Mill, these employees were all inside the mill working. Rather the action of the Union on its picket line was directed solely towards the two employees of the Sales House who were riding in its truck. The Trial Examiner found, and there is no question of fact involved here, that the purpose of the picket line and its activities towards the drivers of the Sales House truck was to induce those employees to cease handling the goods of the Kaplan Rice Mill; it is further without dispute that an object of the Union's activities was to force the Kaplan Rice Mill to recognize the Union as the bargaining representative of its employees, although, as mentioned above, the Union did not represent any substantial number of its employees, if it represented any at all. In determining that the above facts violated the law, the Court of Appeals for the Fifth Circuit said in part:

"The statute clearly provides a remedy for

the type of conduct engaged in by the Union without resort to any distinction between primary and secondary activities. If the Union's activities come within the language of the statute, they constitute an unfair labor practice, regardless of whether they might have been considered a true 'secondary boycott' under the old common law or under any of the modern and popular theories. The Trial Examiner found that the pickets refused to allow a truck, owned by the Sales House, a neutral grain warehouse operator, to enter petitioner's mill; that when it attempted to enter on another street, the pickets threw stones at it; and that the pickets did not represent a majority of petitioner's employees * * *.

Comparing the Union's activties with the plain wording of the statute, it is apparent to us that the Union was attempting to induce and encourage the employees of the Sales House to refuse to transport or otherwise handle the goods or commodities of the rice mills. The purpose of such action was to compel the rice mills to recognize the union as a representative of its employees, although it did not represent a majority of its employees * * * To allow the Board to rule such activity as prohibited by the statute not to be a violation thereof simply because it occurred in the vicinity of the struck employer's plant would render the section ineffective and insufficient."

On page 14 of the brief to this Court of the Board, there is found a tacit admission that the facts of the case constitute a violation of the language of Section 8(b)(4) (A) and (B). That portion of the Board's brief reads as follows:

"Read *in vacuo*, without regard to the other provisions of the act and to the legislative history which shows that Congress did not intend to outlaw primary strike pressure, 8(b)(4) (A) and

(B) would prohibit primary labor action no less than secondary labor action."

As we will show later in this brief, the Board has exaggerated the consequences of a decision by this court affirming the decision of the Court of Appeals. If this Court affirms the decision of the lower court there will still be ample room for protected activity by a Union at the site of the so-called "primary" employer's plant. However, we submit that the Board's brief has admitted that the activities of the Union in question here violate the plain provisions of Section 8(b)(4) (A) and (B). Of course, the Board goes on to say that the above section must be "construed" with the common law idea of "secondary boycott" in mind. For this reason, we discuss this term in the next section of our brief.

II.

SECTION 8(b)(4) (A) and (B) MAKES NO REFERENCE TO "SECONDARY BOYCOTTS" OR TO "PRIMARY" AND "SECONDARY" PICKETING.

Since a very casual reading of Section 8(b)(4) (A) and (B) of the Act shows clearly that the terms "secondary boycott", and "primary" and "secondary" activities or picketing are nowhere mentioned in that section it may appear naive, at first glance, to set forth a separate section of this brief to demonstrate the above fact. However, since the Board's brief has placed such great emphasis upon the distinction between primary and secondary activities as found in Section 8(b)(4) (A) and (B), and has discussed at length the secondary boycott features of the above section, respondents desire to establish clearly that such language is not to be found in the Act itself.

It is a fact that Section 8(b)(4) is commonly referred to as the "secondary boycott" section of the Act and it may be worthwhile to offer at this time an explantion for the use of that term in describing, or referring to, this section of the Act. However, as clearly expressed in the quotation immediately below, the fact that this section of the Act is referred to as the "secondary boycott" section does not establish by any method of logic that the section was designed to outlaw "secondary boycotts"—whatever that term might mean. In 1 Labor Law Journal 835,908 (1950), the able writer of that article points out that apparently Judge Rifkind was one of the first to use the "secondary boycott" appellation to refer to Section 8(b)(4) (A) and (B) of the Act. The article continues:

> "While that term is nowhere used in the Taft-Hartley Act, Judge Rifkind found, in his researches into the Act's legislative history that the term had been used on numerous occasions by members of the Senate. That it was often used is certainly no indication that the section as finally enacted was meant to outlaw only the common law boycott; it might well have been that the Senators were having the same trouble finding a shorthand term to describe the activities prohibited by Section 8(b)(4) that others are having today. Even more germane to the problem, if Congress had seen fit to outlaw only the 'secondary boycott', whatever that species of action may be, it would have been far easier, far more natural, for Congress simply to say so rather than to engage in all the effort which undoubtedly went into drafting Section 8(b)(4) in its present form."

Although the Board seems reluctant to acknowledge that the act does not contain the terms "secondary boycott" and "primary" and "secondary" activities or

picketing, the United States Court of Appeals have made that discovery. For example, in the opinion below in the instant case, the Court said:

> "The Board attempts to draw a fine distinction between primary and secondary action. Although the term 'secondary boycott' does not appear anywhere in the section, the section itself is often referred to as the 'secondary boycott' section, and is most commonly understood to make secondary boycotts an unfair labor practice. **We know of no accurate definition for the term 'secondary boycott'.**" (Emphasis added.)

In *N.L.R.B. vs. Wine, Liquor & Distillery Workers*, 178 F. (2d) 584 (C.A.-2-1949), the Court of Appeals for the Second Circuit stated:

> "In view of Senator Taft's statement about the meaning of the section, it seems idle for the respondent [the Union] to argue that only such 'secondary boycotts' as were unlawful in common law, or under the law of some particular state, fall within the prohibitions of the section."

And in *Printing Specialties & Paper Converters Union vs. LeBaron*, 171 F. (2d) 331 (C.A.-9-1948), the court said:

> "Appellants say they were merely picketing Sealright's product and were not engaged in a secondary boycott as that term is commonly understood. The statute however, does not use the term 'hot cargo', 'picketing the product', or 'secondary boycott.' It broadly sweeps within its prohibition an entire pattern of industrial warfare deemed by Congress to be harmful to the public interest."

And in *I.B.-E. W. vs. N.L.R.B.*, 181 F. (2d) 34 (C.A.-2-1950), Judge Clark, dissenting, and being unable

to reconcile some conflicting decisions by the Board, stated:

> "Perhaps the difficulty comes from the use of those vague terms 'primary' and 'secondary', which are not terms of either science, art or of the statute and **which serve only to confuse and to contradict.**" (Emphasis added.)

III.

THE BOARD'S ATTEMPT TO READ INTO SECTION 8(b)(4) (A) and (B) A DISTINCTION BETWEEN "PRIMARY" AND "SECONDARY" PICKETING AND TO SANCTION VIOLATIONS OF THE LAW IN "PRIMARY" CASES IS UNWARRANTED AND ERRONEOUS.

A.

There is no room for interpretation or construction of a statute where the language is clear and there is no ambiguity.

As shown by the Board's decision in this case and also by their brief presently before the court, the Board has made major interpretations of Sections 8(b)(4)(A) and (B) by reading into that section a congressional intent to distinguish between primary and secondary activities or picketing and a further congressional intent that while secondary picketing and activities were to be unlawful, the primary activities were to be lawful. In order to demonstrate this interpretation, the Board has plunged into the mass of congressional reports and debates which preceded the passage of the amendment to the National Labor Relations Act.[1] Basically the ques-

[1] The Board's brief also quotes from a committee report which was prepared after the passage of the Taft-Hartley amendment to the Act. See pages 72-75 of the Board's brief. We submit that it is going afield to find the method of applying a statute by looking in a report prepared after the statute has become law.

tion before the court in the instant case is one of statutory construction. It is a question of interpreting the provisions of Sections 8(b)(4) (A) and (B) of the National Labor Relations Act, applying that interpretation to the facts of the case, and announcing the result. The rules of statutory interpretation are many, and the cases which have arisen in this court setting forth the rules are very many. However, the cardinal rule, the first rule of statutory construction is that if the language of the statute is clear, unambiguous, and not beyond the limits of the constitution, then no further interpretation is necessary. In *United States vs. Hill*, 248 U.S. 420, 63 L. Ed. 337 (1919), the court stated:

> "The meaning of the act must be found in the language in which it is expressed, when as here there is no ambiguity in the terms of the law."

In *Adams Express Co vs. Kentucky*, 238 U.S. 190, 59 L. Ed. 1267 (1915), the language is found:

> "It is elementary that the first resort, with a view to ascertaining the meaning of a statute is the language used. If that is plain, there is an end to construction and the statute is to be taken to mean what it says."

In *U. S. vs. Ewing*, 184 U.S. 140, 46 L. Ed. 471 (1902), the court stated:

> "It is said that as thus construed the statute leads in many cases to great injustice, and hence such a construction should not be adopted. The difficulty is that any other construction violates the clear directions of the law, and although the result may be to withhold its benefits from some who might be regarded as otherwise entitled to it, yet we cannot for that reason alter its terms so as to include them and thus ourselves enact instead of construing the law."

In *Caminetti vs. United States*, 242 U.S. 470, 61 L. Ed. 442 (1917), the court stated:

> "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion. *Hamilton vs. Rathbone*, 175 U.S. 414 * * *."

Other cases may be cited to demonstrate this same rule. *Commissioner of Immigration vs. Gottlieb*, 265 U.S. 310, 68 L. Ed. 1031 (1924); *Bate Refrigerating Co. vs. Sulzberger*, 157 U.S. 1, 39 L. Ed. 601 (1895).

It is submitted that the language of Section 8(b)(4)(A) and (B) is clear. The Board has not pointed to a single vague or ambiguous word in this part of the Act. It must be assumed that Congress intended what it said in plain language and the Board should be directed in this case to apply the language of the Act as it is written—not as the Board believes it should have been written.

B.

Congressional debates and committee reports can be used only to solve doubt, not to create it.

As a corollary of the rule set forth in the preceding subheading, we also find among the decisions dealing with statutory interpretation the rule that reports of congressional committees and statements of congressional leaders may not be used to interpret a statute where the statute itself is unambiguous and requires no interpretation. A clear example of the application of this rule by this court, and an application which refutes the position which the Board has taken, is found in *Caminetti vs. United States, supra*, which dealt with a con-

viction arising under the White Slave Traffic Act. The accused caused a woman to be transported in interstate commerce in order that she would become his mistress or concubine. His defense to the accusation, in part, was that the statute sought to make unlawful such transportation only where the purpose was to place the woman in the **business** of prostitution, not where it was an isolated instance for a private purpose. In support of this argument the accused cited the report which accompanied the introduction of the statute in the House of Representatives, the report showing that the statute was aimed at **commercial** vice. This court, in affirming the conviction, reiterated the foregoing rule that there was no need for construction when the statute was plain on its face and then went on to state:

> "Reports to Congress accompanying the introduction to proposed laws may aid the courts in reaching the true meaning of the legislature in cases of doubtful interpretation. [Citing cases.] But as we have already said, and it has been so often affirmed as to become a recognized rule, **when words are free from doubt they must be taken as the final expression of the legislature's intent and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their introduction or from any extraneous source.**" (Emphasis added.)

We quote below other similar statements made in decisions by this court:

> "Committee reports and explanatory statements of members in charge, made in presenting a bill for passage, have been held to be a legitimate aid to the interpretation of a statute **where its language is doubtful or obscure.** *Duplex Printing Press Co. vs. Deering*, 254 U.S. 443, 65 L.

Ed. 354. But when taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. *Pennsylvania R. Co. vs. International Coal Min. Co.*, 230 U.S. 184, 57 L. Ed. 1446; *Caminetti vs. United States*, 242 U.S. 470, 61 L. Ed. 442. **Such aids are only admissible to solve doubt, and not to create it.**" *Railroad Commission vs. Chicago, B. & Q. R. Co.*, 257 U.S. 563, 66 L. Ed. 371 (1922). (Emphasis added.)

"Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language; or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussion some may have been given more prominence than others, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others." *Mackenzie vs. Hare*, 239 U.S. 299, 60 L. Ed. 297 (1915).

And in a recent decision of this court, *Ex Parte Collett*, 337 U.S. 55, 93 L. Ed. 1207 (1949), Mr. Chief Justice Vinson stated the rule in the following language:

"Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of Section 1404 (a), but from its legislative history. **The short answer is that there is no need to refer to the legislative history where the statutory language is clear.** The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction. *Gemsco, Inc. vs. Walling*, 324 U.S. 244, 260, 89 L. Ed. 921, 933, 65 S. Ct. 605 (1945). **This canon of construction**

has received consistent adherence in our decisions." (Emphasis added.)

C.

There is evidence from the committee reports and congressional debate that Congress desired the result which was arrived at in the instant case by the Court of Appeals.

We have urged above that there is no justification for turning to the legislative history of the Act in order to interpret Sections 8(b)(4) (A) and (B). We say that that section is clear and unambiguous and can be easily applied by a careful reading of its language. As an alternative argument and only in the event that this Court should feel that it should look at the legislative history of the Act, however, we would like to point out that in the legislative history there are references which would lead to the conclusion that Congress did intend that the result obtained by the Court of Appeals in the instant case was the proper result.

For example, in Senate Report No. 105, 80th Congress 1st session, 22, we find the language " * * * strikes and boycotts for recognition are not made illegal if the union has been certified as the exclusive representative." Almost identical language is found in the House Conference Report No. 510, 80th Congress, 1st session, 43, " * * * strikes and boycotts for recognition were not prohibited if the union has been certified as the exclusive representative." Applying the above thought to the facts of the instant case, it would appear that if the Teamsters Union in the instant case had been certified as the bargaining representative of Kaplan's em-

ployes, there would be no prohibition against a strike or boycott by that union. Conversely, it would appear that under the facts as they actually existed, a strike or boycott for recognition by the Teamsters Union would be prohibited by the Act.

This is further buttressed by the provision in Senate Report No. 105, 80th Congress, 1st session, 23, in which the following language is found regarding the proviso at the end of Section 8(b)(4):

> "Attached to Section 8(b)(4) is a proviso clause, which makes it clear that it shall not be unlawful for any person to refuse to enter upon the premises of any employer (other than his own), if the employees of that employer are engaged in a strike authorized by a Union entitled to exclusive recognition. In other words, refusing to cross a picket line or otherwise refusing to engage in strike breaking activities would not be deemed an unfair labor practice **unless the strike is a 'wildcat' strike by a minority group.**" (Emphasis added.)

As will be discussed later in this brief, the proviso to Section 8(b)(4) plays an important role in the application of the subsection. However, for the purpose of the present discussion, the emphasized portion of the Senate Committee Report indicates clearly that if the strike is called by a minority group, or a "wildcat" strike has been called, then the refusal to cross a picket line might be deemed to be an unfair labor practice. In view of the fact in the instant case that the union involved was definitely a minority union, it would appear that the result reached in the instant case by the lower court would be very much in accordance with the discussion found in the Senate Committee Report, above quoted.

Further, Senator Taft described a situation very similar to the facts of the instant case when he was explaining to the Senate what the purposes of Section 8(b)(4) were. His remarks were directed to what is apparently a practice of some unions of organizing a plant from "the top down", i.e., by putting such immediate and strong economic pressure on an employer that he will recognize the union regardless of whether his employees are members of that union. The Senator's statement was:

> "It is made an unfair labor practice for any union **to engage in an indirect organizational strike.** That is to say, the teamsters cannot go to a store and say 'unless you sign up with the clerks' union, we are going to boycott your store,' unless the clerks' union has been certified as a bargaining agent by the National Labor Relations Board * * *
>
> **"I think the committee all agreed that those types of strikes are in effect racketeering strikes.** They are strikes which are not direct strikes to settle questions of wages or hours or better working conditions. They are strikes which are, in effect, attempts to bring indirect pressure on third parties, to get third parties to work in some way to bring about a result which may ultimately be favorable to the one initiating the pressure, which has no direct relation to the work except perhaps with regard to the question of power." (Emphasis added.) 93 *Congressional Record* 3838, April 23, 1947.

Finally and only in the event that the court should feel any need to examine the legislative history of the Act, we would ask the question of the Board, just what was meant in the various committee reports and in the statements by the various senators when they referred to "secondary boycotts"? It should be noted that in the

Board's argument in this case, it has attempted to show that we must resort to the legislative history to discover the true meaning of the Act. The Board shows us the legislative history which is abundant with references to "secondary boycotts." However, the Board discusses "secondary boycotts" only slightly in its brief, and prefers to discuss its distinction between "primary" and "secondary" activities. It would be interesting to determine exactly what the term "secondary boycott" meant to all the people who used it during the course of the legislative history of this statute. In a footnote below we have set out an interesting comment on the definition of "secondary boycott".[2] However, we question whether any of the definitions of "secondary boycott", as found in the cases cited in the footnote, is the concept which was in the minds of the persons who drafted the Act, or whether, having arrived at the language which is now section 8(b)(4), the drafters of the Act decided to term that language the "secondary boycott section" of the Act. In other words, did the legislators have a clear understanding of the nature of a secondary boycott before they wrote Section 8(b)(4) and accordingly put into that section what they understood a secondary boycott to be; or was it that the legislators wrote Section 8(b)(4) to put an end to certain abuses which had grown

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[2] "Taft-Hartley and the 'Secondary Boycott'", Sylvester Petro, 1 Labor Law Journal 835, 908-909 (1950). The following language in the article is supported by numerous citations: "One of the profound difficulties in this approach, as many labor law students will appreciate, is that, of all areas of the common law of labor relations, that relating to the 'secondary boycott' was probably the most confused. There was, and is, confusion with respect to both the physical facts which amount to a 'secondary boycott' and the applicable law. The confusion was, and is, rife and rampant. It is not merely that the courts of the respective states differ with regard to these matters. Confusion and conflict characterize the decisions even within given states. Reference to the cases cited in the footnotes, which give only a hint of the prevailing chaos in the common law of 'secondary boycotts' will show that the quest for understanding is not served by rejecting the express terms of Section 8(b)(4)(A) in favor of the common law."

up in the labor relations field and having spelled out those abuses, then selected the term "secondary boycott" to refer to the section? Did the draftsmen of the Act write Section 8(b)(4) to curtail specific union activity or did they write the Section to define a "secondary boycott"? Manifestly, unless the draftsmen of the Act were thinking of a specific definition of "secondary boycott", and that chanced to be the very same definition which the Board has of that term, the Board's distinction between "primary and secondary" activities is completely unfounded both in the law and its legislative history as well.

D.

The Board's interpretation of Section 8(b)(4) (A) and (B) of the Act is entitled to no special respect because of any supposed "expertness" of the Board in interpreting this law.

On page 62 of the Board's brief, there is found a suggestion by the Board that this court's function in the instant case is limited to determining whether the Board's decision has a "warrant in the record" and "a reasonable basis in law." On the same page, and on the next page, we run across the phrases "uniformity", "technical expertness", and "continuous attention and a clearly allocated responsibility". We are not sure whether the Board is suggesting that its interpretation of law carries a *prima facie* presumption of correctness. If this is the suggestion of the Board we do not agree with it.

If there was ever any validity to the argument that because of its "expertness" the Board's conclusions as to statutory meanings outweigh those of the court, such an argument can have no possible validity as applied to the provisions now under consideration. Attention of

the Court is directed to Section 303 of the Labor Management Relations Act of 1947. This Section 303 contains language identical to that of Section 8(b)(4) (A) and (B) and provides a cause of action for anyone injured as a result of a violation of the provisions of the section. The cause of action shall be heard in the District Courts of the United States, and Section 301 of the Act provides the rules regarding jurisdiction and venue. Thus, since the interpretation of Section 303 of the act is entrusted exclusively to the courts, and since it is identical in language with Section 8(b)(4) of the Act, it cannot be supposed that Congress intended to bind the courts with the Board's notions of the meanings of the language in question. The language is to be interpreted by the courts in accordance with established rules of construction, fundamental among which, as we have stated heretofore, is the rule that Congress must be taken to have meant what it very plainly said. Congress did not choose to talk in terms of "primary" or "secondary" boycotts, but chose instead to prohibit in sweeping terms "an entire pattern of industrial warfare" (*Printing Specialties and Paper Converters Union vs. LeBaron, supra*). Whether or not a particular aspect of that pattern falls within the Board's concept of "secondary" activity is immaterial.

IV.

THE INTERPRETATION PLACED ON SECTION 8(b)(4) (A) AND (B) BY THE COURT OF APPEALS LEAVES AMPLE ROOM FOR CONCERTED ACTIVITIES BY UNIONS AND DOES NOT LEAD TO ABSURD RESULTS.

The Board has stated in its brief that the denial by this Court of the distinction between "primary" and "secondary" activities would place such a great restraint

upon labor organizations that Congress could not possibly have meant what the language of the Act says. The Board indicates that unless the right of a labor organization to engage in privileged "primary" activities is protected by this court these employees would be denied the right of peacefully picketing the immediate business of their employer.

We submit that such a result will not obtain in the event that this court affirms the decision of the Court of Appeals. We say that there is no great dilemma here, that the court either must recognize the unwritten distinction in the law between "primary" and "secondary" boycotts and activities or else prohibit all basic activities and picketing by labor organizations. For example, under the interpretation of the law as we suggest to this court, and particularly under the interpretation of the proviso at the end of Section 8(b)(4) as will be discussed later, Section 8(b)(4) (A) and (B) has no application whatsoever to action or activities by a Union which represents a majority of the employees of the so-called "primary employer", and which peacefully seeks to discourage other employees from entering the struck plant. If the union seeks to induce employees of other employers to refuse to handle the commodity of the struck plant away from the struck plant, such action would be unlawful under respondents theory, and also under the Board's theory of "secondary" activity, apparently.

In addition to the field for labor activities mentioned above for a majority union, there is also left a broad field of action by a minority union. Actually, 8(b)(4) (A) and (B) prohibits a minority union from inducing or encouraging strike action by the employees

of another employer. Thus, a minority union may strike and picket where its activities are directed at anyone, except the employees of another employer. For example, in the instant case there would be nothing unlawful under our interpretation of Section 8(b)(4) (A) and (B) if the union's picketing activities had been directed at the employees of the Kaplan Rice Mill. As a matter of fact, since the union was seeking to organize these employees and seeking to obtain recognition from the employer, it would seem most apparent that the employees of the Kaplan Mill should have been the people to whom the union directed its attention, rather than to employees of some other employer. In addition, the picketing minority union may bring pressure, including economic coercion upon a neutral or "secondary" employer. This was the decision of the Court of Appeals for the Ninth Circuit in *Schatte vs. International Alliance*, 182 F. (2d) 158 (C.A.-9-1950). Furthermore, the picketing minority union may seek to induce or encourage or put pressure upon customers of the primary employer *Consolidated Frame Co.* 91 N.L.R.B. No. 197 (1950), or upon supervisory employees of another employer. *Arkansas Express Inc.*, 92 N.L.R.B. No. 64 (1950).[3]

To summarize this section of our argument, it can be stated succinctly that the interpretation of Section 8(b)(4) (A) and (B) which we seek to have this court pronounce will actually interfere with activities of labor organizations only in those limited number of cases in which the organization is a majority union and seeks

[3] These last cases illustrate the inconsistency of the Board's reasoning. In the instant case the Board refuses to apply the language in Section 8(b)(4) (A) and (B) because the facts of the case do not amount to the Board's idea of a "secondary boycott". However, in the cases cited in the text above, in situations which would appear to be "secondary boycotts", the Board refuses to find a violation of the law because the facts of the case do not meet the requirements of the statute.

to induce employee action which is "secondary" (and thereby unlawful) under the Board's theory or is a minority representative and is seeking to induce the employees of another employer to engage in a concerted refusal to strike or to refuse to handle certain goods. The dire consequences predicted by the Board will not follow—there will remain to all labor organizations the right to strike and picket for whatever purposes are otherwise lawful if this court affirms the decision of the Court of Appeals. The result which we seek is not absurd, nor does it by any stretch of the imagination exceed the constitutional limitations placed upon Congress.

V.

THE INTERPRETATION PLACED ON SECTION 8(b)(4) (A) AND (B) BY THE NATIONAL LABOR RELATIONS BOARD LEADS TO ABSURD AND CONFUSING RESULTS.

The Board has stated in its brief that the contentions of respondents would lead to absurd results and would be far beyond the intention of the legislators who drafted Section 8(b)(4) (A) and (B). We submit that the reverse of that statement is correct,— that the interpretation sought by the Board leads to absured and confusing results. To illustrate this let us examine some of the decisions reached by the Board in handling Section 8(b)(4) (A) and (B) of the act and also some of the positions which the Board has taken before the courts with respect to the same section.

At the outset in examining the decision of the Board in the instant case [4] it will be noted that the Board decided that the Union's activities in this case were "pri-

[4] 84 NLRB 360 (1949).

mary" because they "were carried out in the immediate vicinity of that mill". It would seem therefore that the Board had set up a simple **geographical** test to determine the difference between primary and secondary activities, i.e., if the Union's activities occur in the vicinity of the so-called primary employer's plant, then these activities are "primary" and are privileged under Section 8(b)(4) (A) and (B). If the activities occur elsewhere, then it would seem to follow that the activities were "secondary" and accordingly not privileged under Section 8(b)(4) (A) and (B).

However, the Board apparently ran into difficulty in attempting to apply this simple rule. In *Teamsters Local No. 807 and Schultz Refrigerated Service, Inc.*, 87 N.L.R.B. No. 82 (1950) the Union had a dispute with a trucking company. Although the Union placed no pickets in the vicinity of the company's office or in the vicinity of the company's terminal, it did follow the company's trucks on its routes and when these trucks would stop to make deliveries, the pickets would picket the truck itself. In this case, the Board decided that the action of the Union was lawful because **the site of the dispute was the truck itself**, and that therefore wherever the truck would drive the primary dispute would follow. This decision seemed to establish a rule of a "roving site" of a labor dispute; obviously the basis for such a rule cannot be found in the language of Section 8(b)(4) (A) and (B).

In *N.L.R.B. vs. Denver Building and Construction Trades Council*, No. 393 of the Docket of this Court, the labor organization involved had a dispute with the electrical sub-contractor on a certain construction job. The contractor and the other sub-contractors employed union labor but the electrical sub-contractor employed

non-union labor. The labor organization placed a picket at the site of the job and apparently thereby induced the union employees on the job to walk off. In that case the Board has apparently abandoned its geographical test of primary and secondary activities, because although the picketing occurred at the site of the primary dispute, the Board is asking this Court to find that the actions of the labor organization violated Section 8(b)(4)(A) of the act.

In *International Brotherhood of Electrical Workers vs. N.L.R.B.*, 181 F. (2d) 34, (C.A.-2-1950), the facts were similar to that which were found in the *Denver Building Trades Council Case, supra*, in that the Union involved conducted picketing at the site where the construction work was going on. However, the picketing which induced the union employees to quit the job, was conducted at a time when the non-union employees were temporarily absent from the job. In that case the Court of Appeals for the Second Circuit held that the picketing by the Union was unlawful, in accordance with the decision and order by the Board. Apparently, in this last mentioned case, the Board has again abandoned its geographical test between primary and secondary activities and is looking rather at which group of employees were induced by the Union, i.e., the employees of the so-called "primary" employer or the employees of the so-called "secondary" employer. Again, it should be noted that this distinction and this test are not found within the language of the law.[5]

[5] It is difficult to draw a distinction between the Board's theory in that case and its theory in the case presently before the Court. It should be remembered that in the instant case, although the picketing was within some 300 feet of the plant, the pickets moved from their original stations, ran to the next street to meet the Sales House truck, and stoned it. It cannot be said that these actions were directed at the employees of the Kaplan, who would be the "primary" employer in the instant case.

In *Di Giorgio Food Corp. vs. N.L.R.B.*, 87 N.L.R.B. No. 125, No. 10,605 of the docket of the Court of Appeals for the District of Columbia (under advisement), the Board has enunciated a still different type of rule in distinguishing between "primary" and "secondary" activities. In that case the Union while engaged in a strike at the premises of the "primary" employer, attempted to stop trucks of other employers from entering the plant. One of the drivers of the trucks—who was an employee of another employer and by coincidence was also a member of the striking union,—crossed the picket line. The Union, at a meeting held many miles distant from the situs of the primary dispute, voted a fine of $1,000 against the driver who crossed the picket line and disseminated that fact to the other drivers. Such action by the Union should be clearly violative of the language of Section 8(b)(4)(A). However, the Board has taken the position that this action by the Union was lawful, apparently for the reason that although the inducement of the employees of the "secondary" employer occurred at the Union meeting many miles away from the site of the dispute, the action which the Union sought to occasion by its inducement, i.e., a refusal by the employees of another employer to cross the picket line, would have occurred at the site of the "primary" dispute. The Board has apparently arrived at this conclusion by applying to the facts of this case, as well as all of the cases cited in this section of our argument, its own notions of the distinction between "primary" and "secondary" activities. It appears that the Board makes its decisions as to what is "primary" and what is "secondary" only after the case has been presented to it for decision.

As a further illustration of how the interpretation

placed on Section 8(b)(4) (A) and (B) by the Board distorts the Act, we refer the court's attention to the proviso contained at the end of Section 8(b)(4). We submit that the interpretation placed upon this section of the act by the Board has the effect of nullifying the proviso, and actually treats the proviso as though it were not written. Of course, it is axiomatic that significance and effect must be accorded to every word and section of a statute and that meaning must be given to each part of the statute. *Washington Market Co. vs. Hoffman*, 101 U.S. 112, 25 L. Ed. 782 (1879); *D. Ginsberg & Sons vs. Popkin*, 285 U.S. 204, 76 L. Ed. 704 (1932); *MacDonald vs. Thompson*, 305 U.S. 263, 83 L. Ed. 164 (1938). Yet the interpretation placed by the Board violates this cardinal rule of statutory interpretation for the reason that the Board's interpretation gives no meaning whatever to the proviso.

The proviso to Section 8(b)(4) reads as follows:

> "**Provided** that nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified by a representative of such employees whom such employer is required to recognize under this act."

It is submitted that the purpose of the above proviso was to privilege and make lawful, the refusal by employees to cross a picket line under the circumstances set forth namely, where the picket line was established by a union with whom the employer was required to deal under the provisions of the Act. This proviso means that a union which represented a majority of the employees of a plant **could** lawfully enlist the aid of

employees of other employers not to cross the picket line established at the plant of the "primary" employer in order to force the "primary" employer to recognize the Union as the representative of its employees, or to bring a cessation of business between the "primary" and "secondary" employees. "The proviso expressly privileged a favorable response from other workers to requests by strikers for secondary aid, in certain circumstances; and if the favorable response were privileged, it could scarcely be reasoned that the request for such response would be held unlawful. Furthermore, if the proviso were to be given meaning it would have to be related more directly to the inducing union than to the responsive employees. This followed because the act nowhere makes action by individual employees unlawful, and thus the privileging of individual action by itself would be pointless. If the proviso were to be given point, therefore, it would have to be read as privileging the action of the striking union—action which might otherwise be unlawful under the broad wording of Section 8(b)(4)(A)."[6]

It is submitted that the purpose of the proviso at the end of Section 8(b)(4) is to make lawful certain activities conducted by a majority union which would otherwise be unlawful under that section. But the interpretation placed on this section by the Board does not take into account the existence of the proviso—rather it considers a distinction between "primary" and "secondary" boycotts and activities. In the proceedings before the Board in the instant case, the Board made no reference whatever to the proviso or its possible effect upon

[6] Petro, "Taft-Hartley and the Secondary Boycott", 1 Labor Law Journal 835, 836 (1950). The Court's attention is directed to the following recent articles which also discuss the effect of the proviso. Tower, "The Puzzling Proviso", 11 Labor Law Journal 1019 (1950); Petro, "The Enlightening Proviso", 1 Labor Law Journal 1075 (1950).

the facts of the instant case. In the Court of Appeal the Board referred to the existence of the proviso only in a footnote in its brief. In the brief submitted to this Court, the Board has finally attached some importance to the proviso and does discuss it. However, it is most interesting to note that the Board's discussion in its brief is limited to an effort to show that the proviso does not apply to the instant case, and the Board's brief concludes its discussion of the proviso with the amazing statement:

> "The Board has deliberately abstained from delineating the meaning of the proviso in its relationship to Section 8(b)(4) (A) and (B) for the problems it raises are many, and as in this case, their resolution has thus far been unnecessary to the interpretation of Section 8(b)(4) (A) and (B)."[7]

The Board goes on to offer illustrations of the method in which the proviso may be interpreted. It reproduces as an appendix to its brief the opinion of one of its Trial Examiners as to the meaning of the proviso at the end of Section 8(b)(4), but the Board carefully notes that in setting forth the opinion of its employee, it does so "without inferentially subscribing to the views there expressed * * *." In other words, the Board is asking this court to construe and interpret Section 8(b)(4) (A) and (B) in the light of its legislative history and to ignore the vital language of the Act itself in applying it to the facts of the instant case.

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[7] Footnote 74, pp 80, 81 of Board's brief.

VI.

THE PRESENCE OF THE PROVISO IN SECTION 8(b)(4) CLEARLY INDICATES THAT IT WAS INTENDED BY CONGRESS TO BE THE ONLY EXCEPTION TO THE RULES SET OUT IN SECTION 8(b)(4) (A) and (B).

We have submitted heretofore in our brief that the language of Section 8(b)(4) (A) and (B) is clear and does not require resort to rules of construction in order to determine its meaning. We have also shown that the effect of the proviso at the end of Section 8(b)(4) is to qualify the provisions of Section 8(b)(4). However, in the event that this court should feel that a resort to canons of construction becomes necessary in this case in order to determine the meaning of Section 8(b)(4) (A) and (B), we then submit to the court that the maxim "*expressio unius est exclusio alterius*" is applicable to this situation.

We submit that this maxim is applicable to the wording of Section 8(b)(4), in the event that the court feels that any rules of construction need be applied, for the reason that Section 8(b)(4) (A) and (B) sets out a general rule declaring certain activities unlawful, and then the proviso to the section excepts from the application of the section certain specified activity induced by a majority union. In other words, we say that since Congress saw fit to make an exception to the rule set forth in the Section 8(b)(4) (A) and (B), and set forth that exception in a specific proviso, Congress intended that exception to be the only exception to the rule.

In *Botany Worsted Mills vs. United States*, 278 U.S. 282, 73 L. Ed. 379, 385 (1929) we find the language:

> "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode. *Raleigh & G. R. Co. vs. Reid*, 13 Wall. 269, 270, note 20 L. Ed. 570; *Scott vs. Ford*, 52 Or. 288, 296, 97 Pac. 99."

Other cases exemplifying the same rule are *Bend vs. Hoyt*, 13 Pet. 263, 10 L. Ed. 154, 158-159 (1839); *Kendall vs. United States*, 107 U.S. 123, 27 L. Ed. 437 (1883).

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below be affirmed.

BALDWIN, HASPEL & MOLONY;
LAWRENCE A. MOLONY;
CONRAD MEYER, III

New Orleans, La.
February 16, 1951.

KAUFMAN, ANDERSON & LEITHEAD;
ELIAS R. KAUFMAN

MONROE & LEMANN;
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OCTOBER TERM 1950

No. 313

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL RICE MILLING COMPANY, INC., *et al.*

Brief of Di Giorgio Fruit Corporation As Amicus Curiae

HERMAN PHLEGER
GREGORY A. HARRISON
MARION B. PLANT
111 Sutter Street
San Francisco 4, Calif.
Attorneys for Di Giorgio Fruit Corporation as Amicus Curiae.

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO

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In the Supreme Court of the United States

OCTOBER TERM 1950

No. 313

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

INTERNATIONAL RICE MILLING COMPANY, INC., *et al.*

Brief of Di Giorgio Fruit Corporation As Amicus Curiae

STATEMENT

We file this brief because *Di Giorgio Fruit Corporation v. National Labor Relations Board*, now pending, and numbered 10,605, in the Court of Appeals for the District of Columbia Circuit, involves a question like that presented in the instant case.[1] Inasmuch as this Court's decision in the

[1] A teamsters' union picketed the Di Giorgio ranch for recognition as the collective bargaining representative of certain agricultural laborers. When truck drivers employed by neutral trucking concerns sought to enter the premises for the purpose of making pick-ups or deliveries, they were threatened by the pickets with loss of

instant case will inevitably affect Di Giorgio Fruit Corporation's rights in its own controversy, Di Giorgio Fruit Corporation has almost as much of an interest in the instant case as it does in its own.

STATUTORY PROVISION INVOLVED

The controlling statutory provision is Section 8(b)(4)(A) and (B) of the National Labor Relations Act (61 Stat. 136; 29 U.S.C. Supp. III, sec. 151, et seq.). However, a proviso appearing at the end of Section 8(b)(4) also is highly significant. Section 8(b)(4) in its entirety reads as follows:

> "(b) It shall be an unfair labor practice for a labor organization or its agents—
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> • • • • • • •
>
> "(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such

their union membership. One truck driver who persisted in passing the picket line was fined $1000, and the fine was publicized at the next membership meeting. The Board held that this conduct did not violate Section 8(b)(4)(A) of the Act because it was "primary in character." 87 NLRB No. 125.

labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;"

THE FACTS

The pertinent facts are simple and undisputed.

The Teamsters' Union picketed a mill operated by Kaplan Rice Mills to obtain recognition as the collective bargaining representative of employees of the mill (R. 66-67, 69). The Kaplan employees did not go on strike (R. 67), and there is no claim that the Union in fact represented them or was entitled to certification as their representative (R. 63).

Sales and Service House, a firm engaged in the business of selling feed and grain, had been purchasing various com-

modities from Kaplan (R. 61). When truck drivers employed by Sales and Service House called at the Kaplan mill to pick up some purchases of rice or bran, they were stopped by the pickets and were told that they could not enter the mill because there was a strike on (R. 69). When the truck drivers persisted in entering the mill they were stoned by the pickets (R. 70).

THE PROCEEDINGS BELOW

The Trial Examiner, in respect to the foregoing activities of the Union, found and concluded as follows (R. 79-80):

> "* * * The entire incident clearly establishes that the respondent, again in the words of the Act did 'induce or encourage the employees' of the Sales House, a neutral to the primary labor dispute between the respondent and the complainants, 'to engage in, a strike or concerted refusal in the course of their employment to . . . transport or otherwise handle or work on any goods, articles, material, or commodities or to perform any services' with the avowed object, as shown by Kuhns' testimony, (1) of 'forcing or requiring' the Sales House 'to cease . . . handling, transporting, or otherwise dealing in the products of' Kaplan or 'to cease doing business with' Kaplan and (2) of 'forcing or requiring' Kaplan 'to recognize or bargain with' the respondent as 'the representative of' Kaplan's employees at a time when the respondent was not a certified representative of such employees. The fact that the respondent was not ultimately successful in its attempt to dissuade the drivers of the Sales House from entering Kaplan's mill is immaterial. Inducement or encouragement of the Sales House employees is clearly shown. The undersigned finds that by this conduct the respondent violated Section 8(b), subsections (4)(A) and (4)(B) of the Act."

The Board reversed the Trial Examiner, holding as follows (R. 55):

> "The Trial Examiner also found that the Respondent violated Section 8(b)(4)(A) and (B) by attempting to prevent a Sales House truck from entering the Kaplan mill on October 21, 1947. We do not agree with this finding. The Respondent's activities arose out of the *primary* picketing of the Kaplan mill, and were carried out in the immediate vicinity of that mill. . . ."

The Court of Appeals adopted the Trial Examiner's view of the matter and vacated the Board's decision. It said (R. 95-96):

> "The statute clearly provides a remedy for the type of conduct engaged in by the union, without resort to any distinction between primary and secondary activities. If the union's activities come within the language of the statute, they constitute an unfair labor practice, regardless of whether they might have been considered a true 'secondary boycott' under the old common law or under any of the modern and popular theories. . . .
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> • • • • • • •
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> ". . . We do not think the ends of justice will be best served if we allow the Board to overturn this finding merely because it considers all the activities to be primary instead of secondary. It seems to us that these activities become secondary when the strikers attempted to induce and encourage the employees of this neutral employer Sales House. . . ."

THE QUESTION

It may be conceded that the Union, in attempting to gain recognition from Kaplan, had a right to picket the Kaplan mill for the purpose of inducing strike action by Kaplan employees. It may also be assumed for present purposes

that such picketing is not rendered unlawful by the fact that it has the purely incidental and unintended effect of dissuading employees of others from entering the premises. Here, however, we are not concerned with a purely incidental effect. Here the pickets engaged in conduct aimed unequivocally and exclusively at employees of another concern seeking to do business with Kaplan. The question thus presented is as follows:

Whether a union ineligible for certification which pickets an employer for recognition commits an unfair labor practice when its pickets, by conduct aimed unequivocally and exclusively at employees of a neutral employer, encourage such employees to engage in a concerted refusal to enter the picketed premises on their employer's business.

ARGUMENT

I. The Conduct of the Union Was Exactly That Which Section 8(b)(4)(A) and (B) in Plain Terms Prohibits.

The Act does not use the terms "primary" and "secondary," but provides in plain terms that it shall be an unfair labor practice for a union,

> "* * * to engage in, or to induce or encourage the employees of any employer to engage in, * * * a concerted refusal in the course of their employment to * * * transport * * * any goods, articles, materials, or commodities, or to perform any services, where an object thereof is: (A) forcing or requiring any employer * * * to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 * * *."

This is exactly what the Union did. It encouraged the employees of Sales House to engage in a concerted refusal in the course of their employment to transport goods and to perform services, an object being to force and require Sales House to cease doing business with Kaplan. Furthermore, the ultimate object was to force Kaplan to recognize a union which had not been certified as the representative of Kaplan's employees.

The only qualification of the sweeping prohibition of Section 8(b)(4)(A) and (B) is that contained in the proviso which appears at the end of Section 8(b)(4) and which reads as follows:

> "Provided, that nothing contained in this subsection (b shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;"

The Board cannot rest its case on the foregoing proviso for the reason that it plainly is inapplicable. In the first place, the employees of Kaplan were not engaged in a strike. In the second place, the Union was not a representative of such employees whom Kaplan was required to recognize. And, finally, the proviso relates only to a refusal to enter struck premises and not to the inducement or encouragement of such a refusal[2].

Nevertheless, the Board has concluded that the Union's

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[2]Congress, in the limited circumstances set forth in the proviso, made allowance for the fact that union members generally are reluctant to enter struck premises.

conduct hereinabove mentioned was permissible because "carried out in the immediate vicinity" of the Kaplan mill. Thus the Board, as it has done in certain other cases,[3] has held the Union's conduct lawful because carried on in geographical proximity to the situs of the primary dispute. However, the statute itself does not recognize geography as affecting the lawfulness of questioned conduct excepting in the case covered by the proviso above quoted.

It is a fact therefore that the Board, in holding proper the conduct of the Union in encouraging the employees of Sales House to refuse to enter the Kaplan mill, has created an exception to the statutory prohibition which is not to be found in the language of the statute itself and which cannot be reconciled therewith.

II. The Proviso to Section 8(b)(4) Shows That Congress, In Enacting the Prohibitions Contained In That Section, Had Specifically In Mind Situations Like the Present.

It cannot be contended that Congress's choice of language prohibiting conduct like that involved in the present case was the result of carelessness, for the proviso at the end of Section 8(b)(4) shows very clearly that Congress had specifically in mind situations involving refusal of employees of one employer to enter upon the premises of another where a strike exists and that it deliberately chose to except such situations from the prohibitions of the section only in circumstances which do not exist in the present case.

In seeking to avoid the foregoing conclusion, the Board argued below[4] that since the proviso by its terms qualifies

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[3] See, e.g., *Matter of Electrical Workers and Ryan Construction Corporation*, 85 NLRB 417, and dissent therein of Board Member Gray.

[4] Board's brief below, page 23, note 14.

all of the provisions of "this subsection b" it does not relate particularly to the secondary strike provisions of subdivisions (4)(A) and (B) and may have been adopted for the reason that the conduct to which it relates would otherwise be rendered unlawful by some provision of Section 8(b) other than subdivisions 4(A) and (B). This contention is entirely inconsistent with both the history and content of the proviso.

In the first place, it is apparent from the legislative history that the proviso was aimed primarily at paragraph (4) of Section 8(b) and was not adopted because of any compelling need to qualify paragraphs (1), (2), (3), (5) or (6). We say this because the proviso had its source in the Senate bill (S. 1126), and in that bill as reported from committee and as originally passed by the Senate[5] the proviso, by its terms, related only to paragraph (4) (Leg. Hist. pp. 114, 241).[6] Paragraphs (1), (2), (3), (5) and (6), although all but the last were contained in the bill, were not mentioned in the proviso, and the proviso was not broadened so as to refer to these subdivisions until conference (House Conf. Rep. No. 410, p. 7; Leg. Hist. p. 511). In short the proviso was aimed primarily at paragraph (4) and was broadened to refer to the other provisions as well only as an afterthought. This history explains why the proviso appears at the end of paragraph (4) in the middle of subsection (b) rather than at the end of the subsection.

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[5]While the bill passed by the Senate was designated H.R. 3020, the language of the Senate bill had been substituted for that of the House bill. 93 Cong. Rec. 4999; Leg. Hist. 1438.

[6]The citations of "Leg. Hist." refer to the Legislative History of the Labor-Management Relations Act of 1947, a compilation of the bills and legislative reports and debates published by the National Labor Relations Board in 1948.

Not only is it true that the proviso was inserted primarily to qualify paragraph (4), but it also seems plain from its content that it was directed particularly at subdivisions (A) and (B) the secondary strike provisions. We say this because the content of the proviso is peculiarly related to the content of those subdivisions, and for the further reason that its content is such that it does not in fact qualify subdivision (C) and would qualify subdivision (D) only in unusual circumstances. It does not in fact qualify subdivision (C) because that subdivision applies only to a strike where another union has been certified and where the employer therefore is *not* required to recognize the striking union, whereas the proviso applies only where the striking union is entitled to recognition. Similarly, it would be an unusual case in which a strike prohibited by subdivision (D) would be one sponsored by a union which the employer is required to recognize. The content of the proviso relates solely to secondary strike activity (refusal of an employee of one employer to enter upon the premises of another employer where a strike exists) and thus is related directly and peculiarly to the subject matter of the prohibitions of secondary strike activity in subdivisions (A) and (B).

We submit that the proviso clearly demonstrates that Congress had specifically in mind situations like the present and that its selection of language which in plain terms prohibits conduct like that here involved was not inadvertent.

III. The Board's Error Lies in Substituting Its Own Concept of Secondary Activity for the Congressional Concept as Expressed in the Language of the Act.

Because it was the Congressional purpose to prohibit various kinds of conduct loosely characterized in the debates as "secondary" strikes and boycotts, the Board has based its decisions in this and other cases upon its own notion of what is "primary" and what is "secondary" rather than upon the Congressional concept as expressed in the plain language of the statute.[7] The Board thus has relied upon the legislative history to overcome the plain words of the statute, a procedure which this Court has repeatedly condemned. See *Ex Parte Collett*, 337 U.S. 55, 61.

The fact is, of course, that Congress did not leave it to the Board or to the courts to indulge their own notions of what constitutes secondary activity, but itself spelled out what it wanted to prohibit. The fact that the conduct here in question does not conform to the Board's concept of secondary activity is immaterial, for it is the Congressional concept as spelled out in the statute that is controlling.

The Board argued below that in times past no court ever regarded conduct like that here in question as constituting secondary activity. It may be doubted that this is true.[8] But in any event Congress, in enacting the statute, pointedly

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[7] As demonstrated by the several cases now pending in this Court, men have varying ideas as to what constitutes a "secondary boycott." The Restatement of the Law of Torts does not use the phrase because of its uncertain meaning. Restatement of Torts (1939), Chapter 38, Topic 4 Scope Note.

[8] For example in *C. S. Smith Met. Market Co. v. Lyons* (1940), 16 C.(2d) 389, where pickets seeking recognition from an employer turned away from the picketed premises truck drivers employed by neutral employers, the court justified this conduct upon the ground, among others, that it is "the established law of this state that the secondary boycott is a form of economic pressure which labor organizations may properly employ * * *." 16 C.(2d) at 395.

refrained from use of the word "secondary" and from thus limiting the statutory prohibition to any pre-existing concept of secondary activity.[9] The proviso hereinabove mentioned at the end of Section 8(b) is illustrative of the fact that Congress had no intention of hewing to any line theretofore drawn, for certainly no pre-existing legal rule or theory ever made the legality of conduct attacked as secondary depend upon whether the primary strike was ratified or approved by a union whom the employer was required to recognize under the National Labor Relations Act.

Congress, after lengthy consideration and a great deal of attention to language, enacted a statute which prohibits certain carefully described conduct. The Board, instead of applying the Congressional language, has substituted other phrases and has then reasoned from them as if they were in the statute. The result is that it has been deciding cases entirely without reference to the statutory language.[10] It was of this kind of approach that Mr. Justice Holmes was speaking when he said:

> "Much trouble is made by substituting other phrases assumed to be equivalent [to the statutory language], which are then reasoned from as if they were in the act. The court below argued as if maintaining competition were the expressed object of the act. The act says nothing about competition. I stick to the exact words used."
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> (Dissenting opinion in *Northern Securities Co. v. United States*, 193 U.S. 197, 403.)

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[9] "The statute * * * does not use the terms 'hot cargo,' 'picketing the product,' or 'secondary boycott.' It broadly sweeps within its prohibition an entire pattern of industrial warfare deemed by Congress to be harmful to the public interest." *Printing Specialties and Paper Converters Union v. Le Baron* (C.A. 9th), 171 F.(2d) 331.

[10] For example, in the present case the Board, in rendering its decision, made no reference to the language of the Act.

The Board treats Congress like a backward child judged to be incapable of saying what it means or of really meaning what it says. The result is that in the present case, as in others, the Board holds conduct to be proper which Congress, in plain words, has said shall constitute an unfair labor practice.

IV. The Board's Argument That Application of the Statute as Written Would Outlaw Primary Strikes Is Specious.

In opposing application of the statute as written, the Board argued below that Section 8(b)(4)(A) should not be read literally because a literal reading would forbid all primary, as well as secondary, strikes and picketing, since even a primary strike "has as 'an object thereof' to cause the employer to 'cease doing business' with another person."[11]

But that argument involves a strained, not a literal, reading of Section 8(b)(4)(A), and is specious. The 'object' of a strike is to enforce the union's demand against the struck employer. *Restatement of the Law of Torts, sec. 777.* In the case of a secondary strike, the union's demand of the struck employer, express or implicit, is that he cease doing business with another person upon whom the union desires to bring economic pressure. In the case of a primary strike, the union's demand of the struck employer is that he grant recognition, or improved wages, hours, or working conditions. In short, in the case of a primary strike, the concession sought to be obtained from the struck employer, and hence the *object* of the strike, is, not that he cease doing

[11] Board's brief below, page 9. It is the Board's thought that an object of a primary strike is to bring the employer's business to a halt and, thus, to force him to cease doing business with others.

business with someone, but that he grant recognition, or improvements in wages, hours or working conditions.

The context of Section 8(b)(4)(A) leaves no doubt that the word "object," in reference thereto, was used in the sense above mentioned. In other words, inducement or participation in a strike is rendered an unfair labor practice by that Section only if the demand made upon the struck employer, express or implicit—and hence the object of the strike—is that the employer cease doing business with another person or cease using, selling, handling, transporting, or otherwise dealing in the products of another producer, processor, or manufacturer.

In reference to Section 8(b)(4)(B), the word "object" has a somewhat different connotation; but this again is clear from the context. In (B), by plain terms, the legality of the strike is made to depend upon whether it is in support of a demand for a particular concession—that is, recognition—from an employer other than the one struck.

All of the foregoing is clear from the context. A sensible reading of the provisions does not outlaw a strike in support of a demand upon the struck employer for recognition, or improved wages, hours or working conditions (i.e., a primary strike); nor does such a reading involve any other results which are absurd or of doubtful constitutionality. Such results can be obtained only by straining the language of the Section and furnish no justification for abandoning that language in favor of phrases not to be found in the Act.

V. The Board's Disregard of the Statutory Language Has Led to Results as Varied as Different Men's Notions of a Secondary Boycott.

As heretofore noted, the Board in the present case gave controlling significance to the fact that the Union's activities "were carried out in the immediate vicinity of the mill." One might suppose from this that if activities designed to induce a refusal of service had been carried on at a place distant from the mill, the Board would have reached a different result. A reference to other cases, however, will reveal that this is not so and that the Board, by ignoring the language of the statute, has involved itself in numerous inconsistencies and contradictions.

In the case of *Di Giorgio Fruit Corporation*, the pertinent facts of which are stated at page 1, *supra*, note 1, refusal of truck drivers employed by neutral trucking concerns to enter the picketed premises was induced, in part at least, by fining one of them who passed the picket line $1000 and by publicizing this fine at the next membership meeting. The union's conduct in imposing and publicizing the fine took place many miles away from the picketed premises, but the Board nevertheless held the union's conduct to be lawful. The Board attempted to justify this decision by asserting that the locality of the refusal to perform services, rather than the locality of the inducement, is the determining factor, and, therefore, that inducement of a refusal to perform services is permissible no matter where the inducement takes place so long as the refusal thus induced "is confined to the situs of the primary dispute." (Brief in Court of Appeals, p. 58).

In reaching the foregoing conclusion, the Board apparently conceded that if the union had induced "employees

not to ship to Fruit Corporation at the point of the shipment," its conduct would have violated the statute (Brief in Court of Appeals, p. 59). Thus the Board apparently would have regarded as an unfair labor practice inducement of a refusal to load the trucks with goods for Di Giorgio, as contrasted with inducement of a refusal to deliver the goods after they were loaded. We see no difference in the quality of the conduct involved in these two situations. True, a good union man might feel less reluctance in loading the goods upon the truck than in actually delivering them to the struck premises, but there is no difference either in the quality of the two acts or in the quality of the refusal to perform them; as for the sensibilities of a good union man, Congress has seen fit to protect them only in the circumstances set forth in the proviso which we have mentioned (see page 7, *supra*, note 2).

In other cases, now pending in this Court, the Board has held inducement of a refusal to perform services at "the situs of the primary dispute" to be unlawful. See *International Brotherhood of Electrical Workers, etc. v. National Labor Relations Board*, No. 108, this Term; *National Labor Relations Board v. Denver Building and Construction Trades Council*, No. 393, this Term; *United Brotherhood of Carpenters v. National Labor Relations Board*, No. 85, this Term. In each of these cases a union having a dispute with a subcontractor on a construction job induced employees of the general contractor or of other subcontractors to cease work on the job. In each instance, as here, the refusal to perform services occurred at the "situs of the primary dispute." The only apparent difference between those cases and the present is that in those cases the prem-

ises constituting the "situs of the primary dispute" were not owned by the primary employer (the subcontractor), whereas in the present case the primary employer is the owner.

In still another geographical situation, the Board has held both ways. Where pickets followed the trucks of an employer with whom their union had a dispute to the premises of another employer and there engaged in picketing, the Board held in one case[12] that this conduct violated Section 8(b)(4)(A), but held in another case[13] that it did not.

The Board's decisions cannot be fitted to the language of the statute. Nor can they be fitted to any other pattern. They are as varied as are different men's notions of what constitutes a secondary boycott.

VI. The Existence of a Right to Picket Does Not Mean That the Pickets May Properly Engage in Unlawful Conduct.

In its petition for certiorari, the Board spoke as if the question was whether picketing is prohibited in the circumstances of the present case. But that, as we have already noted (*supra*, pp. 5-6), is not the question. We are here concerned, not simply with picketing, but with conduct on the part of the pickets of which the sole purpose was to induce a refusal of service by employees of a neutral employer.

The existence of a right to picket does not mean that the pickets may properly engage in whatever conduct they may choose. If they resort to violence, then their conduct is tortious and, furthermore, constitutes coercion in violation of Section 8(b)(1) of the Act. Similarly, if they do not confine themselves to inducement of strike action by em-

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[12] *Matter of Sealright Pacific Ltd.*, 82 NLRB 271.

[13] *Matter of Teamsters' Union*, 87 NLRB No. 82.

ployees of the primary employer, but seek also to induce a refusal of service by employees of a neutral employer, then their conduct violates Section 8(b)(4)(A) and (B). The fact that the encouragement or inducement of a refusal of service is practiced through pickets rather than through some other medium does not sanctify such conduct; the case is no different than if the inducement was accomplished by fines and threats of fines as in the *Di Giorgio* case.

We do not mean to say that so-called primary picketing itself would never under any circumstances violate Section 8(b)(4)(A) or (B). On the contrary, in some circumstances it would do so. Where picketing is inextricably mixed with violence, the picketing itself may be tortious and enjoinable. *Milk Wagon Drivers Union, etc. v. Meadowmoor Dairies, Inc.*, 312 U.S. 287. Similarly, where the picketing inextricably mixes lawful inducement of strike action by employees of the primary employer with unlawful inducement of refusals of service by employees of neutral employers, the picketing itself may violate Section 8(b)(4)(A) or (B). It apparently was this sort of situation that Congress had in mind in prohibiting the conduct specified where "*an* object thereof" (emphasis supplied) is one declared to be unlawful.[14]

However, be the foregoing as it may, we submit that

[14] "Section 8(b)(4), relating to illegal strikes and boycotts, was amended in conference by striking out the words 'for the purpose of' and inserting the clause 'where an object thereof is.' Obviously the intent of the conferees was to close any loophole which would prevent the Board from being blocked in giving relief against such illegal activities simply because one of the purposes of such strikes might have been lawful. • • •" (Supplementary Analysis by Senator Taft; 93 Cong. Rec. 6859).

when, as here, a union, through its pickets, engages in conduct which the Act in plain terms prohibits, that conduct, if not the picketing itself, constitutes an unfair labor practice.

CONCLUSION

We respectfully submit that the Board was wrong and that the decision of the Court of Appeals should be affirmed.

Dated: San Francisco, California, February 15, 1951.

HERMAN PHLEGER
GREGORY A. HARRISON
MARION B. PLANT
Attorneys for Di Giorgio Fruit Corporation as Amicus Curiae.

Due service and receipt of a copy of the within is hereby admitted this ____ day of February, 1950, and consent is hereby given that the within be filed.

_____

Solicitor General

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Associate General Counsel
National Labor Relations Board

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Attorneys for Respondents

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 313

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

versus

INTERNATIONAL RICE MILLING COMPANY, INC., ET AL.
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITION FOR REHEARING ON BEHALF OF INTERNATIONAL RICE MILLING COMPANY, ET AL.

BALDWIN, HASPEL & MOLONY;
LAWRENCE A. MOLONY,
CONRAD MEYER, III.
KAUFMAN, ANDERSON & LEITHEAD;
ELIAS R. KAUFMAN.
MONROE & LEMANN;
NICHOLAS CALLAN.

HAUSER PRINTING CO., INC., NEW ORLEANS

IN THE

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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITION FOR REHEARING ON BEHALF OF INTERNATIONAL RICE MILLING COMPANY, ET AL.

International Rice Milling Co., Inc., et al., Respondents in the above entitled matter, and Petitioners herein, respectfully petition this Honorable Court for a rehearing of the cause.

In accordance with Rule 33 of the Court, as amended, Petitioners request this rehearing for the reason that there are substantial grounds to influence and affect the

decision of the Court which have not been previously presented.

Petitioners call to the attention of the Court the fact that in the opinion rendered herein by Mr. Justice Burton, dated June 4, 1951, the Court decided this case on the basis that the activity of the Union was not directed to inducing and encouraging a **concerted** refusal by the employees of the Sales House to transport or otherwise handle goods and materials of Petitioners. As expressly stated in the Court's opinion, in disposing of the case:

> "A sufficient answer to this claimed violation of the section is that the Union's picketing and its encouragement of the men on the truck did not amount to such an inducement or encouragement to **'concerted'** activity as the section proscribes." (Emphasis added.)

Petitioners further call to the attention of the Court that the meaning of the word "concerted" upon which the Court bases its decision, was not discussed in a single sentence in the briefs filed in this matter, either by Petitioners or by the National Labor Relations Board, nor was any oral argument submitted on this point.

Thus, for the reason that the Court's opinion is based upon a legal argument which was never in the contemplation of the parties to the proceeding, Petitioners respectfully and earnestly request that a rehearing be granted in this matter in order to present the matter adequately to the Court.

In support of this Petition for Rehearing and to suggest to the Court that its opinion and decision is in error, Petitioners submit the following arguments and authorities:

The Attempt to Induce the Employees of the Sales House Not to Cross the Picket Line was an Attempt to Induce "Concerted" Action on their Part.

In the first place, attention of the Court is called to the fact that the inducement and encouragement of the employees of the Sales House was merely one incident in a series of incidents involving "secondary boycotts" in a labor dispute which occurred in the rice milling area of the State of Louisiana during the months of September and October 1947. The official Transcript in this Court, and the opinion of the Court below, will show in full the over-all plan of the Union to stop effectively all trading and commerce between the outside business world and the six rice-milling companies involved in this case. The opinion of the Trial Examiner, found in pages 56-85 of the Transcript, shows clearly the plan of the Union to achieve "concerted" refusal by the employees of any and all employers, doing business with the rice mills, to handle the commodities of the rice mills. Thus, it is submitted that on the overall facts of the case there is evidenced the intention of the Union to achieve this "concerted" activity.

Secondly, we call to the Court's attention the exact language of the pickets when they stopped and stoned the two employees of the Sales House, which is the particular incident before the Court. As found in the Transcript, page 69, the pickets told the driver of the truck and his helper:

"Don't let nobody else drive your truck."

Any person familiar with the tactics of labor organizations on strike, knowing the facts of this particular incident, and hearing the language to these two employees of the Sales House ordering them not to permit

their trucks to be used by anyone else to enter the struck plant, would unhesitatingly say that this statement, quoted above, was intended to be a threat to all the other employees of the Sales House, and further, that the pickets intended that this particular driver and his helper should carry that threat back to their fellow employees. This intent on the part of the pickets is so commonly found in many labor disputes that it could not properly be said as a pure matter of fact that the pickets were not seeking "concerted" action on the part of all of the employees of the Sales House.

The Right of an Individual to Refuse to Cross a Picket Line is a "Concerted" Activity, as that Term is Used in the National Labor Relations Act.

In addition to the fact that the pickets were attempting to induce concerted action by the employees of the Sales House, we also call to the Court's attention several decisions by the Board itself in which it has held that the right of an individual to refuse to cross a picket line is a "concerted activity" which is protected by the National Labor Relations Act, and further, that an employer who disciplines an employee who refuses to cross a picket line has thereby committed an unfair labor practice. The term "concerted" appears at least twice in the National Labor Relations Act, once in Section 8(b)(4), and also in Section 7. Section 7 reads in part:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations to bargain collectively . . . and to engage in other **concerted** activities . . ." (Emphasis added).

It is submitted that the term "concerted" as used in Section 7 must have the identical meaning as the term "concerted" in Section 8(b)(4). We have not been able to find any reported decisions of the Courts or the Board which deal with the meaning of the word "concerted" as found in Section 8(b)(4), prior to the decision in the instant case. However, there are numerous decisions of the Board which have treated the term "concerted" as found in Section 7 of the Act.

We particularly call to the attention of the Court the decision of the Board itself in *Cyril de Cordova & Bro.*, 91 N. L. R. B. No. 187 (October 1950). In that case a **single** employee refused to cross the picket line of a union established around the business location of another employer. The Board found that this individual employee was discriminatorily discharged for his refusal to cross the picket line, and **held** that by such discharge his employer violated Section 8(a)(3) of the Act, for the reason that the right to refuse to cross a picket line is a **concerted** activity of this employee which is protected by Section 7 of the Act. Other cases which sustain the right of individual employees to refuse to cross a picket line are:

Montag Bros. Inc., 51 N. L. R. B. 366 (1943);
Illinois Bell Telephone Co., 88 N. L. R. B. No. 191 (1950);
New York Telephone Co., 89 N. L. R. B. No. 45 (1950);
Cinch Mfg. Corp., 91 N. L. R. B. No. 63 (1950);
See *United Biscuit Company of America*, 38 N. L. B. R. 778 (1942).

In the *Cyril de Cordova* case, the single employee who refused to cross the picket line, a man named Finn, was ordered reinstated by the Board because his refusal

was a **concerted** activity. We quote part of the Board's decision in that case:

> "Unlike the situation in the 'partial strike' cases referred to above, Finn's refusal to perform part of his work was not a wilfully contrived violation of plant discipline as a means to an end. It was rather a necessary and unavoidable incidental effect of **a form of concerted action undertaken in a conventional and traditional manner.**" (Emphasis added).

Contrast the above language of the Board with the following language of the opinion of the Court in the instant case:

> "A Union's inducements or encouragements reaching individual employees of neutral employers only as they happen to approach the picketed place of business **generally are not aimed at concerted, . . . conduct by such employees.**" (Emphasis added).

We submit that it is impossible to reconcile the opinion of this Court in the instant case and the opinion of the Board in the last quoted case as to the theory of whether the refusal to cross a picket line is a **concerted** activity or not. On this point alone, we submit that the Court should have this matter reargued so that not only Counsel for Petitioners, but also Counsel for the Board, may submit to the Court their theories and arguments as to what is a "concerted" activity or refusal.

The Number of Employees Involved in the "Activity" Does Not Control the Determination of Whether Their Action is "Concerted" Or Not.

There is an implication in the opinion of the Court in the instant case that the stopping and stoning of the

two employees of the Sales House did not constitute an effort to induce or encourage "concerted" action because there were only two individuals involved.

As shown in the *Cyril de Cordova* case, *supra*, the Board held that the action of **one** employee, amounted to "concerted" activity. We also call to the attention of this Court the decision of the Board in *Central Steel Tube Co.*, 48 N. L. R. B. 604, 612-613 (1943), affirmed in 139 F. 2d 489, in which the Board held that the action of a **single** employee in merely **attempting** to have other employees join with him in a petition for a wage increase was a "concerted and collective" activity.

We also call to the attention of the Court the many decisions by the Board in which the Board has held that the discriminatory discharge of a **single** employee has had the effect of **discouraging** the concerted activities of his fellow employees, and is therefore unlawful. An examination of Volume 88 of the decisions of the National Labor Relations Board (the volume most recently bound) discloses that in the three-month period from January 1, 1950 to March 1, 1950, the Board held no less than **four** times that discrimination directed to a **single** employee discouraged the "concerted" actions of other employees. *Nu-Car Carriers, Inc.*, 88 N. L. R. B. 75 (1950); *Weisfields, Inc.*, 88 N. L. R. B. 545 (1950); *Tennessee Knitting Mills, Inc.*, 88 N. L. R. B. 1103 (1950); *Premier-Southern Ticket Company, Inc.*, 88 N. L. R. B. 1129 (1950). If time permitted a fuller research, we estimate that there would be literally hundreds of decisions of the Board to substantiate this determination.

If action directed by an employer to a single employee is held to **discourage** concerted activities, the

application of that law to the facts of the instant case requires the Court to find, both as a determination of fact and one of law, that the actions of the labor organization in the instant case, directed to the two employees of the Sales House, were attempts to induce and encourage concerted activity by the employees of the Sales House.

Section 13 of the Act Cannot Assist the Court in the Decision of this Case.

The opinion of this Court in the instant case, although based upon the Court's interpretation of the word "concerted", also infers that Section 13 of the Act substantiates the instant result. Section 13 of the Act reads as follows:

> "Nothing in this Act, **except as specifically provided for herein,** shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right". (Emphasis added.)

The above quoted portion of the Act states a general proposition that nothing in the Act shall impede the right to strike. However, the same sentence which declares this general rule makes the express exception of "except as specifically provided for herein". Petitioners submit that their case falls squarely under the language of Section 8(b)(4)(A) and (B), and that for this reason the right to strike in the instant case has been specifically impeded and diminished.

To decide the instant case upon the strength of Section 13 of the Act, by holding that this section can be used to limit Section 8 of the Act, is to ignore the

plain language of Section 13 . . . "except as specifically provided for herein". We submit that this proposition is completely self-evident.

CONCLUSION

For the reasons set forth herein, Petitioners earnestly and respectfully request that a rehearing be granted in this matter so that they may have the opportunity to assist the Court in its decision by their arguments and authorities regarding the meaning of the term "concerted" and that the judgment of the Court of Appeal should be affirmed. Petitioners further suggest that due to the limitation of time in applying for this rehearing the matter has not been adequately covered in this Petition for Rehearing. However, Petitioners submit that the authorities and arguments set forth above are ample to illustrate to the Court the importance of the meaning of the term "concerted" in the field of labor law, and that before disposing of this case by deciding the meaning of the aforesaid term, the Court should have the benefit of briefs and argument by Counsel for both Petitioners and the National Labor Relations Board.

Respectfully submitted,

BALDWIN, HASPEL & MOLONY;
LAWRENCE A. MOLONY,
CONRAD MEYER, III.

KAUFMAN, ANDERSON &
LEITHEAD;
ELIAS R. KAUFMAN.

MONROE & LEMANN;
NICHOLAS CALLAN.

New Orleans, La.
June 16, 1951.

CERTIFICATE

The undersigned certifies that a copy of this Petition has been served on opposing Counsel by depositing a copy in the United States mails addressed to:

Hon. Philip B. Perlman, Solicitor General,
Department of Justice,
Washington, D. C.; and

Hon. George J. Bott, General Counsel,
National Labor Relations Board,
Washington, D. C.

The undersigned further certifies that this Petition for Rehearing is filed in good faith and not for the purpose of delay. The undersigned further certifies that the Petition is restricted to the matters mentioned herein.